No. 10 Orig.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1912.

THE UNITED STATES OF AMERICA,

vs.

JACOB TRIEBER.

APPLICATION FOR A WRIT OF PROHIBITION

ATTORNEY GENERAL, and
EDWARD C. CROW,

Special Assistant to the Attorney General for Petitioner.

A. R. Fleming Printing Co. Second and Clive Streets.

IN THE

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October Term, 1912.

THE UNITED STATES OF AMERICA.

vs.

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APPLICATION FOR A WRIT OF PROHIBITION

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the United States by its attorney general and gives this honorable court to understand and be informed, that,

Whereas, the United States on the 25th day of November, 1905, filed a bill in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, against the

Terminal Railroad Association of St. Louis and thirty-seven other corporations and individuals, defendants therein, to enforce against them the provisions of the Sherman Act of July 2d, 1890, Chapter 647, page 209, 26 Statutes at large of the United States.

And, whereas, said defendants filed their respective answers to said bill and said cause was at issue.

And, whereas, thereafter the Attorney General of the United States filed a certificate in said cause under the Expedition Act of February 11th, 1903, Chapter 554, 32 United States Statutes at large, and said cause was certified to the four circuit judges of the Eighth Circuit and a hearing was had in the cause before the said judges and said bill was dismissed by said Court, by a divided Court, and a decree rendered for the defendants in the cause.

And, whereas, an appeal was duly taken therein by said United States to this honorable Court, and was docketed at the October Term, 1911, and numbered 386, and after argument of counsel for the respective parties therein, said decree of dismissal was reversed by this honorable Court on April 22d, 1912, and remanded to the District Court of the United States of said District, with directions to proceed in conformity with the opinion and directions of this Court as according to the right and justice and the laws of the United States ought to be done, and in which said opinion it was ordered as follows:

"These considerations lead to a reversal of the decree dismissing the bill.

This is accordingly adjudged and the case is remanded to the District Court with directions that a decree be there entered directing the parties to submit

to the Court within ninety days after receipt of mandate a plan for the reorganization of the contract between the fourteen defendant railroad companies, which we have pointed out as bringing the combination within the inhibition of the Statutes.

First: By providing for the admission of any existing or future railroad to joint ownership and control of the combined Terminal properties upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second: Such plan of reorganization must also provide definitely for the use of the Terminal facilities by any other railroad not electing to become a joint owner upon such just and reasonable terms and regulations as will in respect of use, character and cost of service place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third: By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

Fourth: By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then re-billing traffic destined to St. Louis or to points beyond.

Fifth: By providing for the abolition of any special or so-called arbitrary charge for the use of the Terminal facilities in respect to traffic originating in the so-called one hundred-mile area that is not equally and

in like manner applied in respect of all other traffic of a like character originating outside of the area.

Sixth: By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the Terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to the District Court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh: To avoid any possible misapprehension the decree should also contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company or the mode of billing traffic passing over its lines or the establishing of joint through rates or routes over its line or any other power conferred by law upon such commission.

Upon failure of the parties to come to an agreement which is in substantial accord with this opinion and decree the Court will, after hearing the parties upon a plan for the dissolution of the combination between the Terminal Company, the Wiggins' Ferry Company, The Merchants' Bridge Company and the several Terminal Companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems and their future operations as independent systems as may be necessary, enjoining the defendants singly and collectively from any exercise of control or dominion over either of the said Terminal Systems or their related constituent companies, through lease, purchases or stock control, and enjoining the defendants from vot-

ing any share in any of said companies or receiving dividends directly or indirectly, or from any future combination of the said system in evasion of such decree or any part thereof."

And a mandate of this Court commanding compliance with directions in said opinion was, on June 3d, 1912, duly filed in said District Court of the United States in the cause, a copy of which mandate is hereto attached and marked Exhibit No. 1; and, whereas, the Honorable David P. Dyer, Judge of said District Court of the United States, disqualified himself, on the ground that he had been of counsel in the case, and refused to sit in said cause, and the Honorable Jacob Trieber, Judge of the District Court of the United States for the District of Arkansas, was duly selected and assigned to sit therein in the place and stead of him, the said Honorable David P. Dyer, Judge, and accepted said selection and assignment.

And, whereas, on June 3d, 1912, a motion was filed in the said District Court in said cause by said United States for a decree therein on said mandate, which said motion was overruled, a copy of which motion is hereto attached and marked Exhibit No. 2, and on the 11th day of said June, the Court entered an interlocutory decree therein, a copy of which is hereto attached and marked Exhibit No. 3.

And, whereas, on July 8th, 1912, a motion was filed therein by said United States to vacate said interlocutory decree for the reason that the Court had no jurisdiction to enter same, a copy of which motion is hereto attached and marked Exhibit No. 4, which motion the Court denied by order of July 8th, 1912, a copy of which order and opinion of the Court there-

on are hereto attached and marked Exhibit No. 5.

And on July 9th, 1912, Honorable Jacob Trieber in the District Court of the United States for the Eastern Division of the Eastern District of Missouri made an order postponing the hearing on the proposed decree submitted by the solicitor of the complainant until the final hearing of this cause, and in said order overruled objections to the proposed plan submitted by defendants, by which defendant proposed to comply with the interlocutory decree theretofore made in said cause as hereinabove set out except as said objections are included in the plan set out in said order of July 9th, 1912, and which said order directed a plan of reorganization of defendants by changing certain contracts in said order named, and a copy of which said order of Honorable Jacob Trieber so made on July 9th, 1912, is hereto attached and marked Exhibit No. 6.

And, whereas, on the third day of September, 1912, said United States filed a motion therein, addressed to the Honorable Walter H. Sanborn, Senior Circuit Judge of the Eighth Circuit, a copy of which is hereto attached, marked Exhibit No. 7, requesting an order for filing the said mandate of this Court in said cause, and the entry of a decree in this cause, in pursuance of the opinion of this Court in said cause by the four Circuit Judges of the Eighth Circuit, which motion was denied by him in an opinion and order, a copy of which is hereto attached, and marked Exhibit No. 8, for the reason, among others, stated by him, that he had submitted said motion and application to the other three Circuit Judges, and the four Circuit Judges were equally divided in opinion upon the question.

And, whereas, on September 26th, 1912, said United States filed in this cause a motion to set aside said order denying the said motion of the United States, requesting an order for filing the mandate of this Court and an entry of a decree in this cause by the four Circuit Judges of the Eighth Circuit, and requesting the Court to certify pursuant to said Expedition Act of 1903, as amended June 25th, 1910, to the Chief Justice of the United States, the fact that the Circuit Judges could not agree upon the question as to whether or not said mandate should be filed and a decree entered in this case by the four Circuit Judges, which motion the Court denied, a copy of which motion is hereto attached, marked Exhibit No. 9.

And, whereas, on September 24th, 1912, said United States made application to the Senior Circuit Judge of the said Eighth Circuit, Judge Walter H. Sanborn, for an appeal from the order denying the latter motion for filing of mandate and entering of decree by the four Circuit Judges, and an appeal therefrom to this Court was granted to said United States to this Honorable Court, on the 26th day of September, 1912.

And, whereas, said Honorable Jacob Trieber, District Judge as aforesaid, sitting alone in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in said interlocutory decree (Exhibit No. 3) made with a view to entering a final decree in pursuance of the mandate of this Honorable Court hereinbefore mentioned, and in which said interlocutory decree defendants were directed to submit a plan of reorganization and a contract that should conform to the opinion of this

honorable Court in the said cause of the United States of America, Complainant vs. The Terminal Railway Association of St. Louis, et al, defendants, and in pursuance of said interlocutory decree of said Honorable Jacob Trieber, the defendants herein have submitted two plans of reorganization and a form of contract, copies of which two plans of reorganization are hereto attached, marked Exhibits Nos. 11 and 12, and said Honorable Jacob Trieber so presiding in said District Court as aforesaid will, unless prohibited by this Honorable Court, proceed to, and is about to proceed and enter a final decree, a draft of which final decree he has prepared and a copy of which said draft of final decree is attached hereto and marked Exhibit 10, on the mandate issued heretofore on the 23d day of May, 1912, by this Court, assuming to have and claiming the right to exercise a jurisdiction to enter said final decree on said mandate issued by this honorable Court as aforesaid; and which said final decree will approve the form of agreement submitted by the defendants, a copy of which is hereto attached and marked Exhibit No. 10.

Wherefore the United States, the aid of this honorable Court most respectfully requesting, prays remedy by writ of prohibition to be issued out of this honorable Court to said Honorable Jacob Trieber, the Judge of said District Court of the United States as aforesaid, to be directed, to prohibit him from entering the decree on the mandate heretofore issued by this Court in said cause of United States of America vs. St. Louis Terminal R. R. Association et al, herein aforesaid, the premises aforesaid, anywise concerning further before him, and to prevent him from in any

manner enforcing such decree, for any purpose, or from taking any steps whatever in the cause aforesaid as to said decree or any matter or thing remaining to be done in consequence of such mandate, and prohibiting him, the said Judge, generally, from the further exercise of jurisdiction in the cause, or the enforcing of any order, judgment or decree made under color thereof.

Attorney General United States.

Special Counsel.

I have read the foregoing petition by me subscribed, and the facts therein stated are true to the best of my information and belief.

Subscribed and sworn to before me this_____ day of October, 1912.

My commission expires_____

Notary Public City of St. Louis, Missouri.

EXHIBIT 1.

UNITED STATES OF AMERICA, SS:

The President of the United States of America, to the Honorable the Judge of the District Court of the United States for the Eastern District of Missouri,

(Seal of the Supreme Court of the United States.)

Greeting:—

Whereas, lately in the Circuit Court of the United States for the Eastern District of Missouri, in a cause between The United States of America, complainant, and The Terminal Railroad Association of St. Louis et al., defendants, No. 5250, wherein the decree of the said Circuit Court, entered in said cause on the 6th day of June, A. D. 1910, is in the following words, viz:

"Whereas, upon full argument and careful consideration of this case two of the judges of this Court were of the opinion that the complainant should prevail and two of the judges of this Court were of the opinion that the defendants should prevail, and each of them is of the same opinion still, and the Supreme Court of the United States has dismissed the certificate of this division of opinion and has remanded this case to this Court with direction to proceed in conformity with the laws of the United States;

Whereas, Honorable Charles A. Houts, United States attorney for the Eastern District of Missouri, has made a motion on behalf of the complainant that this Court listen to a reargument of this case, and the judges are unanimously of the

opinion that further argument thereof would be futile;

And, whereas, the complainant cannot prevail because only two of the judges are of the opinion that it is entitled to any relief, while two are of the opinion that it is enitled to no relief;

It is hereby ordered that the motion for a re-argument of this case be, and the same is hereby, denied and that the bill of the complainant be, and it is hereby, dismissed.

Walter H. Sanborn,
Willis Van Devanter,
William C. Hook,
Elmer B. Adams,
Circuit Judges."

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And, whereas, in the present term of October, in the year of our Lord one thousand nine hundred and eleven, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern District of Missouri for further proceedings to be had therein in conformity with the opinion of this Court.

April 22, 1912.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 23d day of May, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

(Endorsement)

"5250. File No. 22,307. Supreme Court of the United States, No. 386, October term, 1911. The United States of America vs. The Terminal Railroad Association of St. Louis et al. Mandate. Filed June 3, 1913.

W. W. NALL, Clerk.

United States of America, }
Eastern Division of the Eastern } ss.
Judicial District of Missouri. }

I, W. Nall, Clerk of the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a true copy of the mandate of the Supreme Court of the United States in case No. 5250 of

The United States of America,
Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al.,
Defendants.

as fully as the same remains on file and of record in said case in my office.

In Witness Whereof, I hereunto subscribe my name and affix the seal of said Court, at office in the City of St. Louis, in the Eastern Division of said District, this 15th day of July, in the year of our Lord nineteen hundred and twelve.

(Seal.) W. W. NALL, Clerk of said Court.

EXHIBIT No. 2.

In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

The United States of America,
Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al.,
Defendants.

Comes now the complainant herein and moves the Court to enter the attached copy of decree as and for the final decree in this cause.

EDWARD C. CROW,
Special Attorney to the Attorney General.

In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

The United States of America, Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al., Defendants.

This cause came on to be heard at this term, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 6, 1910; and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon the transcript of the record, and having thereupon on the 22d day of April, 1912, ordered, adjudged and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be and the same is hereby reversed, and that said cause is remanded to this Court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date the twenty-third day of May, 1912.

And afterwards, to-wit, it appearing that on the 3d day of June, 1912, a preliminary decree was entered in accordance with the mandate of the Supreme Court, now, therefore, it is ordered, adjudged and decreed by the Court as follows:

That there shall be removed from the agreement known as Exhibit "A", and executed October 1, 1889, between The Terminal Railroad Association of St. Louis, as first party and the various named defendants herein as second party, Clause XVII thereof, reading as follows:

> "Neither party shall sell, assign, transfer or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the Board of Directors of the first party."

And also Clause XIX, reading as follows:

> "This agreement may be executed in counterparts, and any railroad company not named as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof, thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party thereto."

And in lieu of paragraph XIX thereof an agreement in substantially the following form shall be made between the Terminal Railroad Association of St. Louis, Missouri, party of the first part, and any existing or future railroad company wishing to become a joint owner of the Terminal properties in Missouri and Illinois now held and operated or hereafter held and operated by the said Terminal Railroad Association:

"Whereas, The Terminal Railroad Association of St. Louis, Missouri, has secured and now owns and operates terminal facilities on either side of the Mississippi River and in and adjacent to the cities of St. Louis, Missouri, East St. Louis, Madison, Granite City and Venice, Illinois, adapted and used for handling and interchanging interstate commerce and traffic; and,

"Whereas, the----------Company wishes to secure in proper form and in perpetuity a joint ownership in and a right to use said Terminal properties now held, or hereafter to be acquired, by The Terminal Railroad Association of St. Louis, Missouri,

"Therefore, it is agreed between the parties as follows:

"First: That The Terminal Railroad Association of St. Louis, Missouri, does hereby agree to cause to be transferred and delivered to----------shares of the capital stock of said Terminal Association, said----------shares being the proportion of such stock now held severally by each of the railroad companies owning the stock of The Terminal Railroad Association under the contract heretofore made with said Association and said above named proprietary owning railroad companies, and said Terminal Railroad Association does hereby admit said----------Company to the joint ownership and use with the present proprietary companies of all the above named terminal facilities of the said Terminal Railroad Association of St. Louis, in like manner and to like extent with each and all of the said owning proprietary companies, it being the intent of this agreement that a joint and common ownership and joint use of the above named properties shall be had by the present proprietary owning railroad companies and----------Company to the end and in order

that the said Terminal Railroad Association of St. Louis, Missouri, shall act as the impartial agent of the present proprietary owning railroad companies and_____Company.

"Second: In consideration of said transfer and delivery of said stock, and admission to membership as a proprietary line of said Terminal Company, the said_____Company accepts the right of joint ownership and use herein granted by said Terminal Company, and hereby covenants and agrees to pay its proper proportion of the following items as set out in the contract known as agreement "A" between the Terminal Railroad Association of St. Louis, Missouri, as first party and certain of the proprietary railroad companies named therein as proprietary companies and executed October 1, 1889, to-wit:

1. Rental due to the Bridge and Tunnel Companies under the lease heretofore described, as follows:

Interest on Bridge Bonds	$350,000
Dividend on Bridge Company first preferred stock	149,400
Dividend on Bridge Company second preferred stock	90,000
Dividend on Tunnel Railroad Capital Stock	75,000
To maintain corporate organization of Bridge and Tunnel Companies	2,500

2. Interest on all outstanding 4½ per cent bonds of the first party.

3. Dividends on such bonds or preferred stock, not now contemplated, but that may become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

4. All taxes and assessments, premiums of insurance, rentals on leaseholds and expenses of every kind incurred in the maintenance, operation,

repair and renewal of said terminal system and every part hereof.

5. A sum of money, not exceeding two thousand dollars in any one year, to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party, and any other company or companies whose creation and organization may become necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

"Provided, also that the basis of said adjustment of the above items to be paid by_____ Company shall be as follows: That is to say, the _____Company shall pay such proportion of said above named items as its business carried on, over and upon said Terminal properties shall bear to the whole of the business carried on by the proprietary companies upon and over the properties of the Terminal Company after such rentals or receipts as are derived from other than railroad operation and use have been deducted therefrom.

"The determination and adjustment of the relative proportion of use by the various railroad companies and the settlement of all controversies among them relative to such use shall vest in the Board of Directors of the said Terminal Railroad Association of St. Louis, Missouri: Provided, however, if the disagreement as to the proportion of use arises between a company applying to become a joint owner and the proprietary companies it may be submitted to the District Court of the United States for the Eastern Division of the Eastern District of Missouri upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Third: It is hereby declared to be the intention of the parties hereto, that said_____ Company as consideration for and upon acceptance

of said stock and the execution of this agreement shall and hereby does become a party to the said agreement "A" hereinbefore mentioned with like force and effect as if it had been executed October 1, 1889, the date upon which said agreement was executed by the then parties thereto, save and except that the said----------
Company intends to and does hereby only become a party to the agreement of Oct. 1, 1889, known as Exhibit "A", as modified and changed by the opinion of the Supreme Court of the United States herein and it is intended to and does bind neither of said parties hereto except insofar as it is in accord and harmony with each and every part of said opinion and in compliance therewith.

"Fourth: The stock of said Terminal Company to be issued as herein contemplated shall in form and conditions of issue correspond in all respects with the certificates of stock heretofore severally issued to said proprietary companies.

"Fifth: Upon the execution and delivery hereof or so soon thereafter as can be conveniently done, two (2) shares of stock shall be transferred to such person as said----------
Company may designate as a director of said Terminal Company to represent the interests therein of said----------Company and for the purpose only of qualifying such person as a director; and the remaining shares of stock to be issued to said----------Company, as herein contemplated shall be transferred to said ----------Company, and said Terminal Company shall cause the party designated by said----------Company to be elected a member of the Board of Directors of said Terminal Company

"Sixth: In case of any disagreement between an applying company seeking joint ownership of the Terminal properties and the proprietary com-

panies pending any hearing in the courts of said disagreement the applying company shall be accorded by the proprietary companies the same right to use the terminal properties of defendants herein, and the same service shall be rendered it as is rendered the proprietary companies and when the disagreement shall have been finally settled in court the payment shall be made for such use and service pending the litigation upon the basis finally fixed by the court of future payments for use of the Terminal properties and for the service rendered by the Terminal Company. Provided, however, that before an applying company can avail itself of the use of the properties of the Terminal Company pending litigation it shall furnish a bond with sureties to be approved by the District Court of the United States for the Eastern Division of the Eastern District of Missouri, or the judge of said court, conditioned that prompt payment will be made of all sums due for use of the properties and the service rendered by the Terminal Company pending the settlement of the dispute in court between the applying and the proprietary companies.

"In testimony whereof, the parties hereto have caused this agreement to be executed by their proper officers in duplicate, as of the_____day of_____, 19___.

_____

_____"

It is also ordered that in case any existing or future railroad company desires to use but not to acquire the joint ownership of the properties of the Terminal Railroad Association an agreement in substantially the following form shall be entered into between said company and the Terminal Railroad Association of St. Louis, Missouri:

"Whereas, The Terminal Railroad Association of St. Louis, Missouri, has secured and now owns and operates terminal facilities on either side of the Mississippi River and in and adjacent to the cities of St. Louis, Missouri; East St. Louis, Madison, Granite City and Venice, Illinois; adapted and used for handling and interchanging interstate commerce and traffic; and,

"Whereas, the----------Company wishes to secure in proper form a right to use the said terminal properties now held or hereafter to be acquired by the Terminal Railroad Association of St. Louis, Missouri.

"Therefore, it is agreed between the parties as follows:

"That the said Terminal Railroad Association of St. Louis, Missouri, party of the first part, in consideration of the covenants and agreements herein contained to be kept and performed by ----------Company, party of the second part, does hereby lease, devise and let and grant to second party the right at all times to use for----------years the Terminal properties acquired in Missouri and Illinois in and adjacent to the cities of St. Louis, Missouri; East St. Louis, Madison, Granite City and Venice, Illinois, and properties now or hereafter located in what is known now or may be known as the St. Louis Railway Gateway for Interstate Commerce, as the said properties now are or may be hereafter located, constructed, maintained, operated or acquired for the interchange and handling of interstate commerce by railroad companies at and in the territory above named and the transportation of persons and property over and upon the said Terminal property including the right of said second party to use all real estate, stations, depots, warehouses, docks, ferries, right of way, single and double tracks, loading and team tracks, and bridg-

es and all facilities of every class and kind now owned, leased or controlled or operated by the first party or that may hereafter be operated, controlled or owned or leased by said first party for the purpose of transporting persons and property or for collecting and receiving freight upon the following conditions and terms, to-wit:

"The said party of the first part grants the second party the use of all of its terminal properties and facilities and equal access thereto to the same extent and in the same manner and agrees hereby to perform the same service for the said second party as the said first party now or in the future may give to the present or future proprietary railroad companies in the transportation of persons and property and the interchange of interstate commerce between railroad carriers over the terminal properties of the party of the first part, it being the intention of this agreement to definitely accord to the party of the second part the use of the terminal facilities of the party of the first part so that in respect of use and character of service the said second party shall have the same kind and equal service with that given the present or future proprietary companies in the transportation over said Terminal properties of persons and property and the collection and distribution and handling of freight and shall have equal and like use and service without discrimination of any kind of all facilities and properties now owned or hereafter owned, used, acquired or operated by said first party in connection with its terminal business to the end that the said first party in handling the traffic of the second party and the traffic of the owning proprietary railroad companies, shall act as the impartial agent of said second party and the proprietary owning lines. And in consideration of the several previous undertakings and agreements herein contained to be

kept and performed by said party of the first part the party of the second part hereby contracts and agrees to and with the said party of the first part:

"First: That the said second party or its successors or assigns will pay to the first party for the use of the properties of the first party and for the services rendered in transporting persons and property under this contract its proper proportion of the following items as set out in the contract known as agreement 'A' between the Terminal Railroad Association of St. Louis, Missouri, as first party and certain of the proprietary railroad companies named therein as proprietary companies and executed October 1, 1889, to-wit:

"1. Rental due to the Bridge and Tunnel Companies under the lease heretofore described, as follows:

Interest on Bridge Bonds	$350,000
Dividend on Bridge Company first preferred stock	149,400
Dividend on Bridge Company second preferred stock	90,000
Dividend on Tunnel Railroad Capital Stock	75,000
To maintain corporate organization of Bridge and Tunnel Companies	2,500

"2. Interest on all outstanding 4½ per cent bonds of the first party.

"3. Dividends on such bonds or preferred stock, not now contemplated, but that may become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

"4. All taxes and assessments, premiums of insurance, rentals on leaseholds and expenses of every kind incurred in the maintenance, operation, repair and renewal of said terminal system and every part thereof.

"5. A sum of money, not exceeding two thous-

and dollars in any one year, to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party, and of any other company or companies whose creation and organization may become necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

"Provided, also that the basis of said adjustment of the above items to be paid by_____ Company shall be as follows: That is to say, the _____Company shall pay such proportion of said above named items as its business carried on, over and upon said Terminal properties shall bear to the whole of the business carried on by the proprietary companies upon and over the properties of the Terminal Company after such rentals or receipts as are derived from other than railroad operation and use have been deducted therefrom.

"The determination and adjustment of the relative proportion of use by the various railroad companies and the settlement of all controversies among them relative to such use shall vest in the Board of Directors of the said Terminal Railroad Association of St. Louis, Missouri. Provided, however, if the disagreement as to the proportion of use arises between a company applying to become a joint owner and the proprietary companies it may be submitted to the District Court of the United States for the Eastern Division of the Eastern District of Missouri upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Second: In case of any disagreement between an applying company seeking use of the Terminal properties and the proprietary companies pending any hearing in the courts of said disagreement the applying company shall be accorded by the proprietary companies the same right to use the ter-

minal properties of defendants herein, and the same service shall be rendered it as is rendered the proprietary companies and when the disagreement shall have been finally settled in court the payment shall be made for such use and service pending the litigation upon the basis finally fixed by the court of future payments for use of the Terminal properties and for the service rendered by the Terminal Company. Provided, however, that before an applying company can avail itself of the use of the properties of the Terminal Company pending litigation it shall furnish a bond with sureties to be approved by the District Court of the United States for the Eastern Division of the Eastern District of Missouri, or the judge of said court, conditioned that prompt payment will be made of all sums due for use of the properties and the service rendered by the Terminal Company pending the settlement of the dispute in court between the applying and proprietary companies.

"Provided that nothing herein shall be construed as compelling party of the second part to pay any part of the annual payment of One Hundred Thousand Dollars ($100,000) as a sinking fund made by said Terminal Association under the covenant in the Fifty Million Dollar ($50,000,000) mortgage dated December 16, 1902.

"In testimony whereof, the parties hereto have caused this agreement to be executed by their proper officers in duplicate, as of the_____day of_____, 19___.

_____

_____"

Second: It is ordered by the Court that there be stricken out of the contract, known as Exhibit "A" of October 1, 1889, between the Terminal Railroad As-

sociation of St. Louis, Missouri, and certain named railroad companies who are defendants herein, Paragraph III, which reads as follows:

> "In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

It is ordered that wherever said paragraph III of said contract or a substantially similar one occurs in or is by a reference incorporated into the following named contracts and agreements or any other contracts and agreements between defendants or any of them that it shall be and is hereby removed therefrom so that the said contracts and agreements shall contain no clause unlawfully restricting and restraining interstate commerce to the facilities of the said Terminal Company.

Trust agreement made December 16, 1902—Exhibits, p. 2658.

Guarantee agreement of December 16, 1902—Exhibits, p. 1932.

Admision agreement of December 16, 1902, with Southern Railway Company, Illinois Central Railroad Company, The Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company,

and the Missouri, Kansas and Texas Railway Company—Exhibits, p. 1593.

The agreement admitting the Chicago, Rock Island and Pacific Railway Company, executed December 16, 1902—Exhibits, p. 3250.

Admission agreement of St. Louis and San Francisco Railroad Company of June 9, 1902—Exhibits, p. 3249.

Admission agreement of St. Louis, Vandalia and Terre Haute Railroad Company, executed February 13, 1902—Exhibits, p. 3241.

Third: It is ordered and adjudged that the defendants herein and all existing or future railroad companies who may become joint owners or joint users of the terminal properties of the defendants shall bill traffic as follows:

All traffic destined to St. Louis, Missouri, shall be billed direct to St. Louis, Missouri. All traffic originating in St. Louis, Missouri, shall be billed direct to point of destination and shall not be billed to East St. Louis, Illinois, or other junction point and then rebilled to point of destination.

The defendants shall not bill to East St. Louis, Illinois, or any other junction point, traffic destined to St. Louis, Missouri, and then rebill said traffic to St. Louis, Missouri.

The defendants shall not bill to East St. Louis or other junction points traffic destined to pass through St. Louis, Missouri, to points beyond or through the St. Louis Railway Gateway, and then rebill the said traffic.

Traffic destined to pass through St. Louis, Missouri, or through the St. Louis Railway Gateway to points

beyond, in any direction, shall be billed through to final destination.

And under no circumstances shall traffic destined to St. Louis, Missouri, or points beyond be billed to East St. Louis, Illinois, or other junction point and rebilled to St. Louis, Missouri, or to points beyond nor shall traffic originating in St. Louis be under any circumstances billed to East St. Louis, Illinois, or other junction point and then rebilled to the point of destination.

Fourth: It is ordered and decreed that the defendants herein and any existing or future railroad company acquiring a joint ownership in or a right to use the Terminal properties now held or hereafter acquired by the defendants shall not make a special or so-called arbitrary charge (commonly known as "the arbitrary") upon traffic destined to St. Louis, Missouri, or points beyond, or originating in St. Louis, Missouri, or passing through St. Louis, Missouri, or the St. Louis Railway Gateway to points beyond for the use of and transportation over the terminal properties and facilities the defendants now own or may hereafter acquire, between the termini of the proprietary railroads of said Terminal Association in St. Louis, Missouri; East St. Louis, Granite City, Madison, Venice and Brooklyn, Illinois; nor between the termini of the proprietary railroads of said Terminal Association in the territory of the St. Louis Railway Gateway in the States of Missouri and Illinois.

And it is ordered that in the transportation and handling of traffic by the defendants, the cities and towns of St. Louis, Missouri; East St. Louis, Illinois; Madison, Granite City, Venice and Brooklyn, Illinois,

and the territory in the St. Louis Railway Gateway, shall be treated by the defendants, as to rates charged, service supplied and facilities furnished, as one common commercial and business centre, and the cities and towns above named herein and the territory of the St. Louis Railway Gateway shall be, as to traffic, treated as the St. Louis business district, and one and the same rate for transportation of persons and property shall be charged to and from each of the above named cities and towns and to the territory designated as the St. Louis Railway Gateway.

And it is ordered and adjudged that no different or greater rate be charged by defendants for traffic destined to St. Louis, Missouri, than is charged for similar traffic destined to East St. Louis, Madison, Venice, Granite City or Brooklyn, Illinois, or any other point in the territory designated as the St. Louis Railway Gateway; and that no greater or different rate be charged for traffic destined to East St. Louis, Madison, Granite City, Vence or Brooklyn, Illinois, or any other point in the territory designated as the St. Louis Railway Gateway than is charged for similar traffic destined to St. Louis, Missouri; that no different rate be charged upon traffic originating in St. Louis, Missouri, than is charged for similar traffic originating in East St. Louis, Venice, Granite City, Madison or Brooklyn, Illinois, or any other point in the territory known as the St. Louis Railway Gateway; that no different or greater rate be charged upon traffic originating in East St. Louis, Madison, Granite City, Venice or Brooklyn, Illinois, than is charged upon traffic originating in St. Louis, Missouri; it being intended by this decree to

prevent discrimination in the handling of interstate commerce by defendants either in favor of or against St. Louis, Missouri; East St. Louis, Madison, Granite City, Venice and Brooklyn, Illinois, or any other point in the territory now or hereafter designated as the St Louis Railway Gateway.

Delivery shall be made at any point upon the said Terminal tracks in any of above named cities or towns to which traffic may be billed.

Fifth: It is further ordered that there shall be eliminated from the contract known as Exhibit "A" of October 1, 1889, the following language in paragraph V thereof, to-wit:

> "That such rates of toll or charges for the use of the bridge, depots, and other properties of said terminal system shall, subject to provision of Article 13, be fixed from time to time by the first party as will produce a sum sufficient each year to pay the following, which sums."

And it is ordered that wherever said words above set out in paragraph V of said Exhibit "A" occur in or are by reference incorporated into the following named contracts and agreements between defendants or any of them it shall be and is hereby removed therefrom so that said contracts and agreements shall contain no clauses requiring the defendants to fix and collect rates of toll and charges upon traffic destined to St. Louis, Missouri; or East St. Louis, Madison, Granite City, Venice or Brooklyn, Illinois; or any point in the territory now or hereafter known as the St. Louis Railway Gateway or originating in either of said cities

or towns or in said territory or passing through said cities or towns or territory to points beyond for the use of the terminal facilities and properties of the defendants between the termini of the existing or future proprietary railroads in St. Louis, Missouri; East St. Louis, Madison, Granite City, Venice or Brooklyn, Illinois; or any point in what is now or may be hereafter known as the territory of the St. Louis Railway Gateway.

Trust agreement made December 16, 1902—Exhibits, p. 2658.

Guarantee agreement of December 16, 1902—Exhibits, p. 1932.

Admission agreement of December 16, 1902, with Southern Railway Company, Illinois Central Railroad Company, The Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and the Missouri, Kansas and Texas Railway Company —Exhibits, p. 1593.

The agreement admitting the Chicago, Rock Island and Pacific Railway Company, executed December 16, 1902—Exhibits, p. 3250.

Admission agreement of St. Louis and San Francisco Railroad Company of June 9, 1902—Exhibits, p. 3249.

Admission agreement of St. Louis, Vandalia and Terre Haute Railroad Company, executed February 13, 1902—Exhibits, p. 3241.

Provided, nothing herein shall be construed to prevent the said Terminal Railroad Association from making a proper switching charge for services performed after traffic has been finally delivered to the point of destination to which it was billed in either of

the above named cities or towns or at any point in the territory now or hereafter designated as the St. Louis Railway Gateway.

Sixth. It is further ordered and adjudged that any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of the said Terminal properties and the owning, proprietary companies shall be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed and the party so filing said petition shall at least fifteen (15) days before doing so serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day at least fifteen (15) days after the service of said notice.

Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri and shall be heard when called in its regular order on said docket and the proceedings shall be subject to review by appeal as in any other cases.

Seventh: It is further adjudged and decreed that nothing herein shall affect the power of the Interstate Commerce Commission over rates charged by the said Terminal Railroad Association or the power of said Commission to determine the mode of billing traffic over the line of said Association or any other power legally conferred upon said Commission.

EXHIBIT No. 3.

In the District Court of the United States, Eastern Division of the Eastern Judicial District of Missouri.

The United States of America, Complainant,
vs.
The Terminal Railroad Association of St. Louis et al., Defendants.

INTERLOCUTORY DECREE ON MANDATE.

This cause came on to be heard at this term, the parties appearing by their respective solicitors, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United Sates in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 8, 1910; and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon the Transcript of the Record, and having thereupon on the twenty-second day of April, 1912, ordered, adjudged and decreed that the said decree of the United States Circuit Court, in and for the Eastern Division of the Eastern Judicial District of Missouri, in this cause be and the same is hereby reversed, and that said cause be remanded to this Court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date May 23, 1912, which mandate has been entered of record in this Court on June 3, 1912.

Now, therefore, in obedience to said mandate and in cognizance with the opinion of the Supreme Court of the United States, it is hereby ordered, adjudged and decreed as follows:

That the defendant, The Terminal Railroad Association of St. Louis, and the fourteen railroad companies defendants herein, their successors and assigns, if any, and such other companies as may have become comembers with the said fourteen railroad companies, defendants herein, if any, shall submit to this Court a plan upon which the defendants herein shall have agreed for the reorganization of the contracts, agreements, arrangements and leases, and the use and operation of the properties and terminal facilities of the defendants herein, between The Terminal Railroad Association of St. Louis, Missouri, and its fourteen codefendant railroads, as aforesaid, as will make said contracts conform in all respect to the terms and conditions hereinafter mentioned.

First: By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a place of equality in respect of benefits and burdens with the present proprietary companies.

Second: Such plan or reorganiaztion must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character and cost of service, place every such company as nearly on an equal plane as may be with respect to expenses and

charges as that occupied by the proprietary companies.

Third: By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

Fourth: By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

Fifth: By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called 100-mile area, that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

Sixth: By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the Terminal or proprietary companies which shall arise after a final decree in this cause, may be submitted to this Court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh: The final decree will also contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or the mode of billing traffic passing over its lines, or the other power conferred by law upon such commission.

Eighth: Upon the failure of the parties defendant to come to an agreement within ninety (90) days from June 3d, 1912, which is in substantial accord with this decree, the Court will, after hearing the parties to this cause, upon a plan for the dissolution of the combination between Terminal Company, The Wiggins Ferry Company, the Merchant's Bridge Company, and the several terminal companies related to the Ferry and Merchant's Bridge Company, make such order and decree for the complete disjoinder of the three systems, as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems, or their related constituent companies, through lease, purchase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

JACOB TRIEBER, Judge.

June 11th, 1912.

EXHIBIT No. 4.

In the District Court of the United States in the Eastern Judicial District of Missouri.

The United States of America,
Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al.,
Defendants.

Comes now the complainant herein and objects to this Honorable Court entering any further orders or decrees herein and asks to have the interlocutory decree heretofore entered on June 3, 1912, vacated and set aside for the reason that this Court has no jurisdiction of this case because this said case was under the act known as the "Expedition Act" certified to the United States circuit judges for the Eighth Circuit for hearing and determination and was heard by them; and said circuit judges and not this Court have jurisdiction to enter the decree herein and to make the necessary orders in pursuance of the mandate of the Supreme Court.

EDWARD C. CROW,
Special Asst. to the Att'y. General.

EXHIBIT No. 5.

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

The United States of America, Complainant, vs. The Terminal Railroad Association of St. Louis, et al., Defendants.	In Equity. No. 5250.

Now, at this day, come the parties hereto by their respective solicitors and the said complainant files its motion to vacate the interlocutory decree entered herein on June 3rd for the reason that the Court is without jurisdiction of the cause, and the said motion to vacate having been submitted and the Court being sufficiently advised in the premises, it is

ORDERED that said motion to vacate be and the same is hereby denied; to which ruling of the Court the said complainant now and here excepts.

Opinion of Court filed.

JACOB TRIEBER, Judge.

July 8th, 1912.

EXHIBIT No. 6.

In the District Court of the United States, for the Eastern Division of the Eastern District of Missouri.

The United States of America, Complainant, Against The Terminal Railroad Association of St. Louis and Others, Defendants.	No. 5250.

The plan of a new agreement proposed to be entered into by the defendants came on for hearing, the parties appearing by their respective solicitors, and also the objections thereto filed by the solicitor for the complainant and the form of a decree submitted by the solicitor of the complainant; and the Court having heard arguments of counsel and being now sufficiently advised, doth postpone the hearing on the proposed decree submitted by the solicitor for the complainant until the final hearing of this cause. As to the objections to the proposed plans submitted by the defendants, which were filed by the solicitor for the complainant, the same are overruled except as they are included in the plan hereinafter set out, and which the Court will approve, if and when carried out by the execution of the agreement as therein set forth; that a plan of agreement in words and figures, as follows, to-wit, will be approved by the Court upon final hearing, as being in conformity with the mandate of the Supreme Court of the United States in this case.

PLAN OF REORGANIZATION.

I.

Strike out of the contract entered into on or about the first day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first part, and certain of the defendant Railroad Companies therein named as parties of the second part, the XIX paragraph thereof, which reads as follows:

> "XIX. THIS AGREEMENT may be executed in counter-parts, and any railroad company not named herein as second party hereto, may be admitted to joint use of said Terminal system on unanimous consent, but not otherwise, of the directors of the first part, and on payment of such consideration as they may determine, and on signing this agreement, or any counter-part thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named, as second party hereto."

And in lieu thereof the following shall be adopted, to-wit:

> "It is now agreed between the parties hereto as follows:
>
> "(a) That in case any other railroad company not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined Terminal properties of said Association, upon such just and reasonable terms as shall place such applying com-

pany upon a place of equality in respect of benefits and burdens, of the parties hereto of the second part.

"(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will in respect of use, character and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges as that occupied by the proprietary companies.

"(c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner or user, as herein provided for, and the Terminal Company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States, within and for the Eastern Division of the Eastern District of Missouri, upon a petition filed in a certain cause in said Court, entitled, 'The United States of America versus The Terminal Railroad Association of St. Louis et al., No. 5250, Equity Docket,' but any judgment or decree that may be entered therein, shall be subject to review by appeal or writ of error, in the usual manner."

II.

Strike out of said contract dated October 1st, 1889, the III paragraph thereof, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only, and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make

use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control, through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

And in lieu thereof the following shall be adopted, to-wit:

"In consideration of the foregoing each of the proprietary companies (parties of the second part) for itself only, and not for others, accepts the right of joint use hereinbefore granted by the first party, and hereby covenants and agrees that it will pay therefor, as herein provided."

III.

Strike out of said contract dated October 1, 1889, the XVII paragraph, which reads as follows:

"Neither party hereto shall sell, assign, transfer or underlet the rights and privileges hereby granted, or any of them, to any other company or companies, without the unanimous consent of the Board of Directors of the first party.

And in lieu thereof it is agreed as follows:

"Neither party shall underlet the rights and privileges hereby granted, or any of them, to any other company or companies."

IV.

It is further agreed there shall be additional agreements made to said contract dated October 1 ,1889, and any subsequent contracts amending the same, which shall read as follows:

"It is further agreed as follows:

"(a) It is agreed that hereafter traffic destined to St. Louis, in the State of Missouri, or to points west of the Mississippi River, and destined to be transported through the St. Louis gate-way, or traffic destined from the City of St. Louis to points east of the Mississippi River, shall not be billed to East St. Louis, in the State of Illinois, or other junction points, or terminals, of either of said railroad companies which are east of the Mississippi River and then re-billed to St. Louis or points beyond, as aforesaid, but for all such traffic each railroad shall issue through bills of lading unless otherwise directed by the party controlling such traffic.

"(b) It is further agreed that the Terminal Railroad Association, party of the first part, and the defendant Railroad Companies, parties of the second part, shall not make any special or so-called arbitrary charge in respect of the traffic originating within the so-called 100 mile area about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

"(c) Nothing contained in the preceding causes (a) and (b) of this paragraph shall be deemed or taken to affect in any wise, or at any time, the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or any of the railroad companies, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines or any other power conferred upon such commission by law."

There shall be an additional agreement made to the said contract dated October 1, 1889, which shall read as follows:

"It is further agreed that each and every provision in the contract dated October 1, 1889, and all contracts made subsequently thereto between the said Terminal Railroad Association of St. Louis, and its co-defendant railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect."

The complainant, by its solicitor, excepts to the overruling by the Court of its objections to the proposed plan, and also excepts to the plan as approved by the Court.

JACOB TRIEBER,
Judge.

July 9th, 1912.

EXHIBIT No. 7.

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

The United States of America, Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al., Defendants.

Motion Asking for Filing of Mandate and Decree on Mandate.

Now comes complainant, United States of America, and shows to Honorable Walter H. Sanborn, Senior Circuit Judge of the Eighth Circuit, that the above entitled cause was commenced in what was then the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, on the 25th day of November, 1905; a Commissioner appointed and testimony taken and reported to above named court; that the case was upon certification by the Attorney General under the Expedition Act, certified to the Circuit Judges of the Eighth Judicial Circuit for hearing and was argued and submitted to said above Circuit Judges, and after due consideration a decree was entered on June 6th, 1910, dismissing the complainant's petition.

That complainant appealed said cause to the Supreme Court of the United States; that the decree above mentioned was reversed, and the Supreme Court in its opinion filed, says:

"These considerations lead to a reversal of the decree dismissing the bill.

"This is accordingly adjudged and the case is remanded to the District Court with directions that a decree be there entered directing the parties to submit to the Court within ninety days after receipt of mandate, a plan for the re-organization of the contract between the fourteen defendant Railroad Companies and the Terminal Company, which we have pointed out as bringing the combination within the inhibition of the statute.

"First: By providing for the admission of any existing or future railroad to joint ownership and control of the combined Terminal properties upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

"Second: Such plan of re-organization must also provide definitely for the use of the Terminal facilities by any other railroad not electing to become a joint owner upon such just and reasonable terms and regulations as will in respect of use, character and cost of service place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

"Third: By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

"Fourth: By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then re-billing traffic destined to St. Louis or to points beyond.

"Fifth: By providing for the abolition of any

special or so-called arbitrary charge for the use of the Terminal facilities in respect of traffic originating in the so-called one hundred mile area that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

"Sixth: By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the Terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to the District Court upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Seventh: To avoid any possible misapprehension the decree should also contain a provision that nothing therein shall be taken to affect in anywise or at any time the power of the Interstate Commission over the rates to be charged by the Terminal Company or the mode of billing traffic passing over its lines or the establishing of joint through rates or routes over its line or any other power conferred by law upon such commission.

"Upon failure of the parties to come to an agreement which is in substantial accord with this opinion and decree, the Court will, after hearing the parties upon a plan for the dissolution of the combination between the Terminal Company, the Wiggins Ferry Company, The Merchants' Bridge Company and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems and their future operations as independent systems as may be necessary, enjoining the defendants singly and collectively from any exercise of control or dominion over either of the said Terminal Systems or their related constituent companies, through lease,

purchase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends directly or indirectly, or from any future combination of the said system in evasion of such decree, or any part thereof."

That on the 23rd day of May, 1912, the mandate of the Supreme Court was issued, and which said mandate is herewith presented and asked to be filed in this cause.

Complainant, now, therefore, requests Your Honor to make an order for the filing of the mandate and the entry of a decree in pursuance of the direction contained in the opinion of the Supreme Court that justice may be done.

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United States Attorney.
EDWARD C. CROW,
Of Counsel for Complainant.

EXHIBIT No. 8.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

The United States of America,
Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al.,
Defendants.

This is an action by the United States to enforce the provisions of the Sherman anti-trust act of July 2, 1890, Chap. 647, 26 Stat. 209. The Attorney General of the United States filed a certificate under the expedition act of February 11th, 1903, Chap. 544, 32 Stat. 823; the final hearing of the case was had before the four circuit judges of this circuit; the bill was dismissed by a divided court; upon an appeal the decree of dismissal was reversed by the Supreme Court on April 22nd, 1912; upon the receipt of a mandate by the Clerk of the District Court, which had then succeeded the United States Circuit Court, the government moved the District Court, before his honor, Judge Dyer, presiding for an entry of the preliminary order requiring the defendants to submit a plan of reorganization within ninety (90) days after that date. Counsel for the defendants suggested that his honor, Judge Dyer, was disqualified because he had been of counsel for the government and presented the question whether any further action taken in the case should not be had by the Circuit Judges, the case having been sent to them under the expediting act of Congress for trial. Sub-

sequently Judge Trieber of the Arkansas District Court was assigned to the Eastern District of Missouri in place and in aid of Judge Dyer, he entered an order requiring the defendants on or before ninety (90) days from June 3, to submit to the Court a plan of reorganization. Such a plan has been submitted to Judge Trieber pursuant to the mandate and decision of the Supreme Court which, with some modifications, has been approved by Judge Trieber. The government, however, filed with Judge Trieber a suggestion that the matter should be heard and determined by the Circuit Judges of the Circuit. This suggestion was overruled by Judge Trieber after careful consideration and his reasons for his conclusion were stated in a careful opinion. A time has been tentatively fixed for the entry by him of the final decree in the month of October, 1912. Thereafter the government applied to me to make an order for the filing of the mandate and the entry of a decree in pursuance of the direction contained in the opinion of the Supreme Court and that application has been carefully considered.

Because at the time when the application was made and submitted to me I was not assigned to the District Court of the Eastern District of the State of Missouri and had no jurisdiction alone to enter decrees or take proceedings in that case in the absence or disqualification of Judge Dyer, because if I had been so assigned it would have been an act of discourtesy to withdraw a case which had been submitted for action to Judge Trieber, who would have had at least concurrent jurisdiction until he had disposed of the matters before him, because in my opinion he has the judicial power and it is his duty to proceed to order the filing of the

mandate, if it has not been done, and the entry of the final decree in pursuance of the order of the Supreme Court, and because the question whether or not the application for the filing of the mandate and the entry of the final decree pursuant thereto should be heard and decided by the four circuit judges has been submitted to them and they are divided in opinion upon the question, the application and motion of the government herein is denied.

WALTER H. SANBORN,
Senior Circuit Judge.

St. Paul, Minnesota, August 30, 1912.

United States of America,
Eastern Division of the Eastern } ss.
Judicial District of Missouri,

I, W. W. Nall, Clerk of the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a true copy of an order filed and entered of record September 3rd, 1912, in case No. 5250 of

The United States of America,
Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al.,
Defendants.

as fully as the same remains on file and of record in my office.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office in the City of St. Louis, in the Eastern Division of said District, this third day of September in the year of our Lord nineteen hundred and twelve,

(Signed) W. W. NALL,
Clerk of said Court.

[Seal]

EXHIBIT No. 9.

United States of America, }
Eastern Division of the Eastern } ss.
Judicial District of Missouri, }

In the District Court of the United States in and for The Eastern Judicial District of Missouri.

The United States of America, Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al., Defendants.

To H. S. Priest and Thomas M. Pierce, attorneys for the defendants in the above entitled cause:

You are hereby notified that I will, of the 26th day of September, 1912, at Denver, Colorado, file a motion before the four circuit judges of the United States Court of Appeals of the Eighth Circuit, asking the four circuit judges to set aside the order made on August 30th, denying the motion of complainant asking that the mandate of the Supreme Court be filed and that a decree be entered, and I will in said motion so to be filed ask the certification of the chief justice of the United States of the fact of the inability of the majority of the circuit judges to agree upon the question as to whether or not the said mandate of the Supreme Court should be filed and a decree entered thereon.

CHARLES A. HOUTS,
United States Attorney for the Eastern District of Missouri.
EDWARD C. CROW,
Special Assistant to the Attorney General.

United States of America,
Eastern Division of the Eastern } ss.
Judicial District of Missouri,

In the District Court of the United States in and for the Eastern Judicial District of Missouri.

The United States of America,
Complainant,
vs.
The Terminal Railroad Association of St. Louis, et al.,
Defendants.

Comes now the complainant herein and moves the Court to set aside its order of August 30th, 1912, denying the motion of the complainant asking for the filing of the mandate herein and the entry of a decree thereon and complainant now requests the Court to certify, pursuant to the expedition act of 1903, as amended June 25th, 1910, to the chief justice of the United States the fact that the circuit judges could not agree upon the question as to whether or not the mandate should be ordered filed and a decree entered in this case by the four circuit judges.

CHARLES A. HOUTS,
United States Attorney for the Eastern District of Missouri.

EDWARD C. CROW,
Special Assistant to the Attorney General.

EXHIBIT No. 10.

In the District Court of the United States for the Eastrn Division of the Eastern Judicial District of Missouri.

The United States of America, Complainant, Against The Terminal Railroad Association of St. Louis and Others, Defendants.	No. 4042.

Final Decree.

On appeal from a decree dismissing the bill of complaint herein, the Supreme Court of the United States reversed said decree with directions to enter a decree in conformity with the opinion of said Court, the mandate whereof was filed in this court on June 3, 1910.

On June____, 1912, the solicitor for the plaintiff filed and presented to the district judge the following motion for a preliminary decree, as required by said opinion, viz.:

(Copy motion.)

Whereupon, on the 11th day of June, 1912, the Court, acting through the district judge, made the following order, viz.:

(Here copy interlocutory decree on mandate.)

Thereupon, on the 9th day of_____, 1912, the defendants presented to the Court, the district judge sitting, the two following plans, pursuant to said preliminary order and the opinion of the Supreme Court, viz.:

(Here copy Plans I and II.)

Which said plans, and each of them were, by the Court rejected, and in lieu thereof the following plan was prescribed by the Court, and under protest accepted by defendants, to-wit:

(Here copy plan.)

Thereupon, pursuant to said plan, the defendants presented the following form of contract to be executed pursuant to said plan, which was by the Court approved, to-wit:

(Copy form of contract.)

The defendants now present to the Court contracts executed in the form approved heretofore by the Court, and it is thereupon accordingly ordered that the same be, and it is hereby approved as being in compliance with the orders heretofore entered herein, and the opinion of the Supreme Court of the United States.

It is further ordered, adjudged and decreed that defendants, and each of them, be, and they are hereby enjoined and restrained from refusing to admit any existing or future railroad to joint ownership and control of the combined Terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second: From refusing to permit the use of the terminal facilities of the Terminal Railroad Association by any other railroad not electing to become a joint owner thereof upon such just and reasonable terms and regulations, as will in respect of use, character and cost of services, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

Third: From the practice of billing to East St. Louis or other junction points, and then rebilling the traffic destined to St. Louis or points beyond, unless otherwise directed by the party controlling such traffic.

Fourth: From making any special or so-called arbitrary charge in respect of the traffic originating within the so-called one hundred mile area, about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

And further, generally, from violating any of the terms or provisions of the contract between the defendants hereinbefore approved by the Court.

Nothing, however, contained in this decree shall be deemed or taken to affect, in any wise, or at any time, the power of the Interstate Commerce Commission, over the rates to be charged by the Terminal Railroad Association of St. Louis, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred upon such commission by law.

EXHIBIT No. 11.

THIS AGREEMENT, Made this the 22d day of August, 1912, between the TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS (hereinafter called Terminal Company), party of the first part; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, THE MISSOURI PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, WABASH RAILROAD COMPANY, VANDALIA RAILROAD COMPANY, BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY, CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, SOUTHERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, THE CHICAGO AND ALTON RAILROAD COMPANY, CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, and MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, parties of the second part (hereinafter called Proprietary Companies); and the CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, and THE CHICAGO AND ALTON RAILROAD COMPANY, parties of the third part (hereinafter called Guarantors).

WITNESSETH:

WHEREAS, the Supreme Court of the United States, in its opinion in the case of United States of America versus Terminal Railroad Association of St. Louis and others, and the decrees therein entered pursuant to said opinion by the District Court, within and for the Eastern Division of the Eastern District of Missouri (to which reference is hereby made), determined that the III. XVII and XIX paragraphs of the agreement made and entered into on October 1st, 1889, by and between Terminal Company and the Missouri Pacific Railway Company and several other railroad companies therein mentioned and called Proprietary Companies, were in certain respects in violation of the statute of the United States subsequently enacted; and,

WHEREAS, since the date of said agreement several of the above named parties of the second part have, pursuant to the terms of that agreement, been admitted as parties thereto; and,

WHEREAS, the aforesaid Guarantors did by certain special agreements guarantee the performance of the contract of October 1st, 1889, between the Terminal Railroad Association and the Chicago & Alton Railway Company, and the Chicago, Burlington & Quincy Railway Company, and the Vandalia Railroad Company; and,

WHEREAS, it is the desire of the Guarantors that their guaranties so respectively and singly made shall continue in respect of the agreement between the parties of the first and second part, as amended herein.

NOW, THEREFORE, pursuant to and in accordance with said decrees aforesaid, it is agreed as follows:

I.

It is agreed that paragraph XIX of said contract entered into on or about the first day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first part, and certain of the defendant railroad companies therein named as parties of the second part, which reads as follows:

"XIX. THIS AGREEMENT may be executed in counter-parts, and any railroad company not named herein as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such consideration as they may determine, and on signing this agreement, or any counter-part thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named, as second party hereto," is hereby cancelled and made of no further force or effect, and in lieu thereof:

It is now agreed between the parties hereto as follows:

(a) That in case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said Association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilites of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations, as will in respect of use, character and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

(c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner or user, as herein provided for, and the Terminal Company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States, within and for the Eastern Division of the Eastern District of Missouri, upon a petition filed in a certain cause in said court, entitled, "The United States of America versus The Terminal Railroad Association of St. Louis *et al.*, No. 5250, Equity Docket," but any judgment or decree that may be entered therein, shall be subject to review by appeal or writ of error, in the usual manner.

II.

It is further agreed that paragraph III of said contract dated October 1st, 1889, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above de-

scribed, for all passenger and freight traffic within its control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis and pay therefor as herein provided," is hereby cancelled and made of no further force or effect, and in lieu thereof it is now agreed as follows:

In consideration of the foregoing each of the proprietary companies (parties of the second part) for itself only, and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will pay therefor, as herein provided.

III.

It is further agreed that paragraph XVII of said contract dated October 1st, 1889, which reads as follows:

"Neither party hereto shall sell, assign, transfer or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the Board of Directors of the first party," is hereby cancelled and made of no further force or effect, and in lieu thereof it is now agreed as follows:

"Neither party shall underlet the rights and privileges hereby granted, or any of them, to any other company or companies."

IV.

It is further agreed as follows:

(a) It is agreed that hereafter traffic destined to St. Louis, in the State of Missouri, or to points west

of the Mississippi River, and destined to be transported through the St. Louis gateway, or traffic destined from the City of St. Louis to points east of the Mississippi River, shall not be billed to East St. Louis, in the State of Illinois, or other junction points, or terminals, of either of said railroad companies which are east of the Mississippi River and then re-billed to St. Louis or points beyond, as aforesaid, but for all such traffic each railroad shall issue through bills of lading unless otherwise directed by the party controlling such traffic.

(b) It is further agreed that the Terminal Railroad Association, party of the first part, and defendant railroad companies parties of the second part, shall not make any special or so-called arbitrary charge in respect of the traffic originating within the so-called 100 mile area about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

(c) Nothing contained in the preceding clauses (a) and (b) of this paragraph shall be deemed or taken to affect in anywise, or at any time, the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or any of the railroad companies, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred upon such commission by law.

V.

It is further agreed as follows:

That each and every provision in the contract dated October 1st, 1889, and all contracts made subsequent

thereto between the said Terminal Railroad Association of St. Louis and its co-defendant railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers, in three or more parts, each part to be deemed an original, as of the day and year first above written.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
By W. S. McCHESNEY, JR.,
President & General Manager.

Attest:
C. A. VINNEDGE,
[Seal] Secretary.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
By F. H. BRITTON,
President.

Attest:
G. K. WARNER,
[Seal] Asst. Secretary.

THE MISSOURI PACIFIC RAILWAY COMPANY,
By B. F. BUSH,
President.

Attest:
F. W. IRLAND,
[Seal] Asst. Secretary.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN
RAILWAY COMPANY,
By B. F. BUSH,
President.

Attest:
F. W. IRLAND,
[Seal] Asst. Secretary.

WABASH RAILROAD COMPANY,
By F. A. DELANO,
President.

Attest:
E. B. PRYOR,
[Seal] Asst. Secretary.

VANDALIA RAILROAD COMPANY,
By J. J. TURNER,
Vice-President.

Attest:
S. B. LIGGET,
[Seal] Secretary.

BALTIMORE AND OHIO SOUTHWESTERN
RAILROAD COMPANY,
By DANIEL WILLARD,
President.

Attest:
G. F. MAY,
[Seal] Asst. Secretary.

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
By W. K. VANDERBILT, JR.,
Vice-President.

Attest:
E. F. STEPHENSON,
[Seal] Asst. Secretary.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
By M. H. SMITH,
President.

Attest:
J. H. ELLIS,
[Seal] Secretary.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,
By B. L. WINCHELL,
President.

Attest:
F. H. HAMILTON,
[Seal] Secretary.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By H. U. MUDGE,
President.

Attest:
GEO. H. CROSBY,
[Seal] Secretary.

SOUTHERN RAILWAY COMPANY,
By W. W. FINLEY,
President.

Attest:
R. D. LANKFORD,
[Seal] Secretary.

ILLINOIS CENTRAL RAILROAD COMPANY,
By C. H. MARKHAM,
President.

Attest:
BURT A. BECK,
[Seal] Asst. Secretary.

THE CHICAGO AND ALTON RAILROAD COMPANY,
By B. A. WORTHINGTON,
President.

Attest:
H. E. R. WOOD,
[Seal] Asst. Secretary.

CHICAGO, BURLINGTON AND QUINCY RAILWAY,
COMPANY,
By GEO. B. HARRIS,
President.

Attest:
H. E. JARVIS,
[Seal] Secretary.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,
By C. E. SCHOFF,
President.

Attest:
F. JOHNSON,
[Seal] Secretary in Missouri.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,

By D. MILLER,
President.

Attest:
F. S. HOWLAND,
[Seal] Secretary.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,

By EDW B. TAYLOR,
Vice-President.

Attest:
S. B. LIGGETT,
[Seal] Secretary.

THE CHICAGO AND ALTON RAILROAD COMPANY,

By B. A. WORTHINGTON,
President.

Attest:
H. E. R. WOOD,
[Seal] Asst. Secretary.

Filed, Aug. 26th, 1912.

W. W. NALL, Clerk.

United States of America, }
Eastern Division of the Eastern } ss.
Judicial District of Missouri, }

I, W. W. Nall, Clerk of the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a true copy of the Agreement of Defendant Companies as directed

by Mandate of Supreme Court of United States, in case No. 5250 of

United States of America,
Plaintiff,
vs.
Terminal Railroad Association of St. Louis, et al.,
Defendants.

as fully as the same remains on file and of record in said case in my office.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office in the City of St. Louis, in the Eastern Division of said District, this 27th day of August, in the year of our Lord nineteen hundred and twelve.

[Seal]

W. W. NALL,
Clerk of said Court.
By LELA O'NEAL,
Deputy.

EXHIBIT No. 11.

Plan I.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

The United States of America, Complainant, Against The Terminal Railroad Association of St. Louis and Others, Defendants.	}

Now comes the Terminal Railroad Association of St. Louis, one of the defendants in the above-entitled cause, and come also the fourteen defendant railroad companies named therein, and also the St. Louis Southwestern Railway Company, admitted as co-proprietary company since the institution of this suit, and in pursuance of the judgment and decree heretofore entered in this cause, on or about the_____day of June, 1912, respectfully submit to the Court a plan for the reorganization of the existing contracts between said railroad companies, and said Terminal Railroad Association of St. Louis, which will, as they are advised, make said contracts conform in all respects to the judgment and decree of court herein.

PLAN OF RE-ORGANIZATION.

I.

Strike out of the contract entered into on or about the first day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first

part, and certain of the defendant railroad companies therein named as parties of the second part, the XIX paragraph thereof, which reads as follows:

> "XIX. THIS AGREEMENT may be executed in counter-parts, and any railroad company not named herein as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such consideration as they may determine, and on signing this agreement, or any counter-part thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named, as second party hereto."

And in lieu thereof the following shall be adopted, to-wit:

> "It is now agreed between the parties hereto as follows:
>
> "(a) That in case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said Association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.
>
> "(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and

reasonable terms and regulations, as will in respect of use, character and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

"(e) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner or user, as herein provided for, and the Terminal Company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States, within and for the Eastern Division of the Eastern District of Missouri, upon a petition filed in a certain cause in said Court, entitled, 'The United States of America vs. The Terminal Railroad Association of St. Louis et al.,' but any judgment or decree that may be entered therein, shall be subject to review by appeal or writ of error, in the usual manner."

II.

Strike out of said contract dated October 1st, 1889, the III paragraph thereof, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described for all passenger and freight traffic within its control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

"In consideration of the foregoing each of the

And in lieu thereof the following shall be adopted, to-wit:

proprietary companies (parties of the second part) for itself only, and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will pay therefor, as herein provided."

III.

There shall be an additional agreement made to said contract dated October 1st, 1889, which shall read as follows:

"It is further agreed that each and every provision of any other agreement between said Terminal Railroad Association of St. Louis, and said railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect."

IV.

That the decree of the Court approving this plan of re-organization, shall also contain the following clauses, to-wit:

"(a) A clause enjoining and prohibiting the billing of traffic destined to St. Louis, or points beyond, to East St. Louis, or other junction points, and then rebilling same to St. Louis, in the State of Missouri, or points beyond, unless so directed by the party controlling such traffic.

"(b) A clause enjoining and prohibiting Terminal Railroad Association, defendant herein, from making any special or arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, shown by the evidence, that is not equally and in like manner applied in respect of all other

traffic of a like character originating outside of that area.

"(c) A clause providing that nothing in said decree contained shall be deemed or taken to affect, in any wise, or at any time, the power of the Interstate Commerce Commission, over the rates to be charged by the Terminal Railroad Association of St. Louis, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes, over its lines, or any other power conferred by law upon such Commission."

EXHIBIT No. 12.

Plan II.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

The United States of America, Complainant, Against The Terminal Railroad Association of St. Louis and Others, Defendants.	}

Now comes the Terminal Railroad Association of St. Louis, one of the defendants in the above-entitled cause, and come also the fourteen defendant railroad companies named therein, and also the St. Louis Southwestern Railway Company, admitted as co-proprietary company since the institution of this suit, and in pursuance of the judgment and decree heretofore entered in this cause, on or about the----------day of June, 1912, respectfully submit to the Court a plan for the reorganization of the existing contracts between said railroad companies, and said Terminal Railroad Association of St. Louis, which will, as they are advised, make said contracts conform in all respects to the judgment and decree of court herein.

PLAN OF RE-ORGANIZATION.

I.

Strike out of the contract entered into on or about the first day of October, 1889, between said Terminal

Railroad Association of St. Louis, as party of the first part, and certain of the defendant railroad companies therein named as parties of the second part, the XIX paragraph thereof, which reads as follows:

> "XIX. THIS AGREEMENT may be executed in counter-parts, and any railroad company not named herein as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such consideration as they may determine, and on signing this agreement, or any counter-part thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named, as second party hereto."

And in lieu thereof the following shall be adopted, to-wit:

> "It is now agreed between the parties hereto as follows:
>
> "(a) That in case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said Association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.
>
> "(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis,

may enjoy the use thereof upon such just and reasonable terms and regulations, as will in respect of use, character and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

"(c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner or user, as herein provided for, and the Terminal Company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States, within and for the Eastern Division of the Eastern District of Missouri, upon a petition filed in a certain cause in said Court, entitled, 'The United States of America vs. The Terminal Railroad Association of St. Louis et al.,' but any judgment or decree that may be entered therein, shall be subject to review by appeal or writ of error, in the usual manner."

II.

Strike out of said contract dated October 1st, 1889, the III paragraph thereof, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

And in lieu thereof the following shall be adopted, to-wit:

"In consideration of the foregoing each of the proprietary companies (parties of the second part) for itself only, and not for others, accepts the right of joint use hereinbefore granted by the first party, and hereby covenants and agrees that it will pay therefor, as herein provided."

III.

There shall be an additional agreement made to said contract dated October 1st, 1889, which shall read as follows:

"It is further agreed that each and every provision of any other agreement between said Terminal Railroad Association of St. Louis and said railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect."

IV.

There shall be additional agreements made to said contract dated October 1st, 1889, which shall read as follows:

"It is further agreed as follows:

"(a) It is agreed that hereafter traffic destined to St. Louis or points beyond shall not be billed to East St. Louis or other junction points and then re-billed to St. Louis, in the State of Missouri, or points beyond, unless so directed by the party controlling such traffic.

"(b) It is further agreed that the Terminal Railroad Association, party of the first part, shall not make any special or arbitrary charge for the use of its terminal facilities in respect of traffic originating within the so-called 100-mile area

about St. Louis, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

"(e) Nothing contained in the preceding clauses (a) and (b) of this paragraph shall be deemed or taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association of St. Louis or the mode of billing traffic passing over its lines or the establishing of joint through rates or routes over its lines or any other power conferred by law upon such Commission."

7

No. 10 Orig.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

In Re Ex Parte UNITED STATES OF AMERICA,
Petitioner,

vs.

JACOB TRIEBER, Judge, etc.,
Respondent.

DEMURRER TO APPLICATION FOR PROHIBITION, AND BRIEF AND ARGUMENT IN SUPPORT THEREOF.

JACOB TRIEBER,
Judge, etc.
By H. S. PRIEST,
Counsel.

Real Estate Pig. & Pub. Co., St. Louis, Mo. Kin., Central 3256; Bell, Olive 1093

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

In Re Ex Parte UNITED STATES OF AMERICA,
Petitioner,

vs.

JACOB TRIEBER, Judge, etc.,
Respondent.

DEMURRER TO APPLICATION FOR PROHIBITION.

Comes now the respondent, Jacob Trieber, Judge of the District Court, sitting alone, in the case of the United States of America v. Terminal Association of St. Louis, and others, in the District Court of the United States, for the Eastern Division of the Eastern District of Missouri, and for return to the rule heretofore made herein by this court; doth demur to the information herein filed, and for cause of demurrer showeth. The facts alleged in the application herein are not sufficient in law to warrant the granting of the writ.

Wherefore, this respondent prays the judgment of

this Honorable Court whether he should be compelled to make any further or other answer to said information, and prays to be hence dismissed.

JACOB TRIEBER,

Judge, etc.

By H. S. PRIEST,

Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

In Re Ex Parte UNITED STATES OF AMERICA,
Petitioner,

vs.

JACOB TRIEBER, Judge, etc.,
Respondent.

STATEMENT, BRIEF AND ARGUMENT IN SUPPORT OF DEMURRER TO INFORMATION.

This respondent, sitting as Judge of the District Court of the United States, within and for the Eastern Division of the Eastern District of Missouri, was about to proceed to the entry of a final decree in the case of the United States of America v. Terminal Railroad Association of St. Louis *et al.*, pursuant to the mandate of this Court (224 U. S. 383), when on the application of the United States an order to show cause in prohibition was made by this court.

Whether this respondent has correctly interpreted

and followed the mandate of this court is not now here for discussion. It would be unseemly to attempt to discuss that question. He merely suggests that he has acted judicially; when his judgment is up for review, the respective contestants should have an opportunity to be heard.

The only question for consideration now is: Whether the District Court for the Eastern Division of the Eastern District of Missouri, acting by the respondent, as duly commissioned judge thereof, was invested with authority under the **Judicial Code** to proceed to a final decree, pursuant to the mandate of this court.

This question has arisen from the adoption of the Judicial Code abolishing the Circuit Courts and devolving their jurisdiction upon the District Courts; and from the fact that the cause in which Respondent was judicially acting was instituted in the Circuit Court to enforce the Sherman Anti-trust Act, and was, upon the certificate of "General Public Importance" by the Attorney General, expedited and heard by the Circuit Judges, under Act of Congress of February 11, 1903 (32 Stat. L. 823).

The position of the Government now is: The cause having been heard by the Circuit Judges upon the motion of the Attorney General, the Circuit Judges must continue in the judicial administration of the cause to its finality, although they are no longer Circuit Judges, and there is no longer a Circuit Court; in other words, that the right of judicial administration attaches to the judicial personnel and not to the court.

This contention would give irrepealable legislative force to the mere motion of the Attorney General; a consequence we cannot think was intended.

A very brief condensation of the facts set forth in the application in their relation to the legislation of Congress will make clear the point for decision.

The cause was instituted in the Circuit Court when

that Court was in existence and had jurisdiction and when it had four Circuit Judges to administer its jurisdiction.

After the evidence was taken, the Attorney General filed a certificate of "general public importance" with the clerk of the court, whereupon the cause was advanced pursuant to the Act of February 11, 1903, "to expedite the hearing and determination" of certain class of suits. The bill was dismissed by a divided court and upon appeal to this court was reversed and "remanded to the District Court, etc."

Between the date of the appeal and the decision by this court the **Judicial Code** took effect, by which the Circuit Courts were abolished and their jurisdiction was vested in the District Courts; hence this Court remanded the case to the District Court and could do nothing else.

That the Judges, authorized by law to administer the jurisdiction of the District Court, were the proper ones to enforce the mandate of this Court, was the view of the Government, is perfectly manifest from the motion addressed to the District Judge to enter the interlocutory decree required by the mandate of this Court.

The **Judicial Code** invests the District Courts with jurisdiction of "All suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies." (Chap 2, Sec. 23, Judicial Code.)

Chapter 13 of the Judicial Code abolishes the Circuit Courts and directs all suits pending therein to be "proceeded with and disposed of in the **District Courts in the same manner and with the same effect as if originally begun therein."**

Chapter 14 of the Judicial Code repeals all prior acts establishing Circuit Courts and the appointment of circuit and district judges, reserving only the tenure of the judges.

The Judicial Code (Sec. 1, Chap. 1) provides for a District Judge for each District Court.

There is no provision for the exercise of any judicial authority by any circuit judge, except by special appointment, pursuant to the provision of Sec. 18, Chap. 1, of the Code. He then derives his power from such appointment and from no other source. As Circuit Judges they have no authority in the enforcement of the jurisdiction of the District Courts.

After devolving upon the District Courts the jurisdiction formerly possessed by the abolished Circuit Courts, the Code (Chap. VI.) creates a Circuit Court of Appeals, and provides (Sec. 117):

> "There shall be in each Circuit a Circuit Court of Appeals **which shall consist of three judges.** * * which shall be a court of record **with appellate jurisdiction** as hereinafter limited and established."

It must be conceded, in view of this legislation, if this suit was now instituted, it could only be heard by a District Judge unless some Circuit Judge should be appointed under the provisions of Sec. 18, Chap. 1, to discharge the functions of a District Judge and the case be brought before him in that capacity.

It is equally true if no certificate had been filed by the Attorney General stating that in his opinion this was a case of "great public importance," and in consequence had not been tried before the four Circuit Judges, that the enforcement of the mandate of this Court would have devolved upon the District Judge.

What then is there that changes the present usual courses in the jurisdiction of the District Court?

It is claimed that the certificate of the Attorney General, under the "Expediting Act" of February 11, 1903, in some way operated to vest in the personnel of the then Circuit Judges who heard and determined the case a perpetual right to adjudicate upon it until finally dis-

posed of The decree ordered by this Court does not finally dispose of the case. Further orders under the express terms of the decree (6th paragraph) may be made by the "**District Court** upon petition filed in this cause." Can it be then that a mere certificate of the Attorney General invests certain persons who at the time happened to be Judges of a Court which Congress has abolished, and whose official functions have been changed, with a continuing and perpetual right to sit in the particular case?

When the certificate was made it gave no additional judicial authority to the Circuit Judges. Each had the *ex officio* authority to sit in the case—they had the right to sit collectively as a Court in the case in the absence of the "Expediting Act." It merely invokes a power already existing. If their discretion commended it, they could, upon the application of either party, have taken the same course independent of the "Expediting Act" as that sactioned by the Act. The only right actually conferred by the Act was a direct appeal to this court. This court has held one part of the Act unconstitutional.

R. R. v. Inter. Com. Comis'n, 215 U. S. 216.

In response to the contention that the Act was unconstitutional in another aspect, the Circuit Court for the Eastern District of Massachusetts (U. S. v. New York, etc., R. R. Co., 165 Fed. Rep. 742), there spoke as to the purpose of the provisions of the Act, viz:

> "The interests involved under the Sherman Anti-trust Act and its amendments are liable to include exceedingly extensive, pecuniary values; and the possible remedies given thereby, which combine, with the rest, the powers, express or implied, of issuing injunctions and of appointing receivers and declaring forfeitures, all relating to vast properties, are of so radical a character that

a hasty or inapt administration of the statute by a single judge might inevitably embarrass industries as wide as the continent, and even practically destroy them, before an appellate tribunal could be reached. Therefore, we say the statute under which the Attorney General filed his certificate is not injurious, because, on the whole, when availed of, it operates for the protection of the interests of respondents more than for those of the United States."

In the text of the Expediting Act the words Court and Judges are interchangeable. This is seen in attending to the language of the Act.

> "In any **suit** in equity **pending,** or hereafter brought in any Circuit Court of the United States * * * wherein the United States is complainant, the Attorney General may file with the Clerk of **each court** a certificate that in his opinion, etc. Thereupon such **case** shall be given precedence over others * * *, be assigned **for hearing** at the earliest practicable day, etc."

It is a suit possessing only the ordinary attributes and incidents of a suit.

It is brought in the court, advanced by the court and heard by the court. When the court is abolished the application of the Act to that court perishes.

From these considerations and others, pointed out in the opinion (197 Fed. Rep. 448), written by Respondent in response to the motion of the Attorney General and made an exhibit to the application, it seemed clear to Respondent then and now that as District Judge it was his duty to proceed to a final decree in this case.

H. S. PRIEST,

Counsel for Respondent.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

In Re Ex Parte UNITED STATES OF AMERICA,
Petitioner,
vs.
JACOB TRIEBER, Judge, etc.,
Respondent.

10

STATEMENT, BRIEF AND ARGUMENT IN OPPOSITION TO DEMURRER.

Attorney General.

Judge, etc.

EDWARD C. CROW,
Of Counsel for Complainant.

A. B. FLEMING PRINTING CO., 204 OLIVE ST., ST. LOUIS.

IN THE

Supreme Court of the United States

October Term, 1912.

In Re Ex Parte United State of America,
Petitioner

vs.

Jacob Trieber, Judge, etc.
Respondent

STATEMENT, BRIEF AND ARGUMENT IN OPPOSITION TO DEMURRER TO APPLICATION FOR PROHIBITION

STATEMENT

The United States of America on November 25th, 1905, filed a bill in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri against the Terminal Railroad Association of St. Louis and certain other named

railroads and individuals to enforce against them the provisions of what is known as the "Sherman Act" of July 2d, 1890, Chapter 647, page 209, 26 Statute at Large of the United States, and thereafter the attorney general of the United States filed a certificate in said cause under the Expedition Act of February 11th, 1903, Chapter 554, 32 United States Statutes at Large, and the cause was certified to the four circuit judges of the Eighth Circuit, and a hearing was had before said circuit judges, and, the judges being divided in opinion, an order was entered dismissing the bill. An appeal was taken by the complainant to this Honorable Court and the cause was docketed at the October Term, 1911, and numbered 386, and after argument the said decree of dismissal was reversed by this Honorable Court on April 22d, 1912, and remanded, and in remanding the cause, this Honorable Court stated:

"These considerations lead to a reversal of the decree dismissing the bill.

"This is accordingly adjudged and the case is remanded to the District Court with directions that a decree be there entered directing the parties to submit to the Court within ninety days after receipt of mandate a plan for the reorganization of the contract between the fourteen defendant railroad companies, which we have pointed out as bringing the combination within the inhibition of the Statutes.

"First: By providing for the admission of any existing or future railroad to joint ownership and control of the combined Terminal properties upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

"Second: Such plan of reorganization must also

provide definitely for the use of the Terminal facilities by any other railroad not electing to become a joint owner upon such just and reasonable terms and regulations as will in respect of use, character and cost of service place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

"Third: By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

"Fourth: By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then re-billing traffic destined to St. Louis or to points beyond.

"Fifth: By providing for the abolition of any special or so-called arbitrary charge for the use of the Terminal facilities in respect to traffic originating in the so-called one-hundred-mile area that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of the area.

"Sixth: By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the Terminal or proprietary companies which shall arise after a final decree in this cause, may be submitted to the District Court upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Seventh: To avoid any possible misapprehension the decree should also contain a provision that nothing therein shall be taken to affect in any wise or at any

time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company or the mode of billing traffic passing over its lines or the establishing of joint through rates or routes over its line or any other power conferred by law upon such commission.

"Upon failure of the parties to come to an agreement which is in substantial accord with this opinion and decree the Court will, after hearing the parties upon a plan for the dissolution of the combination between the Terminal Company, the Wiggins' Ferry Company, The Merchants' Bridge Company and the several Terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems and their future operations as independent systems as may be necessary, enjoining the defendants singly and collectively from any exercise of control or dominion over either of the said Terminal Systems or their related constituent companies, through lease, purchases or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends directly or indirectly, or from any future combination of the said system in evasion of such decree or any part thereof."

A mandate of this court in said cause was duly filed in the District Court of the United States on June 3d, 1912.

The Honorable David P. Dyer, Judge of said District Court, disqualified himself on the grounds that he had been of counsel in the case and refused to sit in said cause, and the Honorable Jacob Trieber, Judge of the District Court of the United States for the District of Arkansas, was selected to act in place of the

Honorable David P. Dyer and accepted said selection.

On June 3d, 1912, complainant in said cause filed a motion for a decree, which was denied.

On June 11th, Judge Trieber, respondent herein, sitting alone in the District Court entered an interlocutory decree.

On July 8th, 1912, the complainant filed a motion to vacate the above named interlocutory decree for the reason that Judge Trieber sitting alone as District Judge had no jurisdiction to enter said decree, and this motion was by Judge Trieber overruled.

On July 9th, 1912, Judge Trieber entered an order postponing the hearing on the proposed decree submitted by the solicitor of the complainant until the final hearing of the cause, and in the same order overruled objections of complainant to the proposed plan submitted by the defendants as a compliance with the opinion of this Honorable Court.

On September 3d, 1912, complainant in said cause presented a motion to Honorable Walter H. Sanborn, Senior Circuit Judge of the Eighth Circuit, asking an order be made directing the filing of the mandate of this Honorable Court and the entry of a decree pursuant to the opinion of this Court by the four Judges of said Eighth Judicial Circuit, and thereafter, after the motion was by Judge Sanborn denied in an opinion in which it was stated that the matter had been submitted to the Circuit Judges and they were divided in opinion on the question.

On September 12th, 1912, the complainant filed a motion with Judge Sanborn asking that the order denying the motion for filing of mandate and entry of decree by the four Circuit Judges of the Eighth Circuit

be set aside and requesting the Circuit Judges to certify the fact of disagreement to the Chief Justice of the United States pursuant to the Expedition Act of 1903, as amended June 25th, 1910, and which said last named motion was by Judge Sanborn denied.

Application was then made to this Honorable Court for a writ of prohibition to prevent Judge Trieber from proceeding to enter the decree and an order was made directing respondent to show cause on December 3d, 1912.

Respondent filed the following demurrer to the application for a writ of prohibition:

"Comes now the respondent, Jacob Trieber, Judge of the District Court, sitting alone, in the case of the United States of America v. Terminal Association of St. Louis, and others, in the District Court of the United States, for the Eastern Division of the Eastern District of Missouri, and for return to the rule heretofore made herein by this court, doth demur to the information herein filed, and for cause of demurrer showeth: The facts alleged in the application herein are not sufficient in law to warrant the granting of the writ.

"Wherefore, this respondent prays the judgment of this Honorable Court whether he should be compelled to make further or other answer to said information and prays to be hence dismissed."

Upon the state of this record the case is here for submission to the Court.

BRIEF.

The Act of 1903 known as the Expedition Act is as follows:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraint and monopolies,' approved July second, eighteen hundred and ninety, 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided."

It will be observed that the section above set forth provides the case shall be assigned for hearing before not less than three of the **Circuit Judges**. The statute

directs **what officials** shall hear the cause. The statute was intended to make it the duty of the four circuit judges to immediately hear the case and was not intended to confer **jurisdiction of the case on the circuit court because the circuit court already had jurisdiction of the case** and it was already pending.

Section 118 of the "Judicial Code" shows that the office of Circuit Judge has not been abolished, but is continued.

Said section reads as follows:

> "There shall be in the second, seventh, and **eighth circuits,** respectively, **four circuit judges,** in the fourth circuit, two circuit judges, and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. They shall be entitled to receive a salary at the rate of seven thousand dollars a year, each payable monthly. Each circuit judge shall reside within his circuit."

The statute was intended to and did direct and empower the four circuit judges to hear and decide the cause immediately because it was deemed important that litigation, that might involve such vast interests, as anti-trust proceedings, should be heard by more than one judge and should be disposed of promptly, and without delay.

The case was heard by the four circuit judges and, being unable to agree an order dismissing the cause was entered.

There is no doubt the four judges had at this time jurisdiction of the case.

In August, 1910, an appeal was taken to the Supreme Court. The case was argued and submitted at the October term, 1911, and decided in May, 1912.

In the interim between the argument of the case and the decision the "Judicial Code" became operative on January 1st, 1912.

Transfer of Jurisdiction.

It is claimed by respondent that, as the Judicial Code directs (Sec. 290, Chapter 13), that "All suits and proceedings pending in said Circuit Courts on the date of the taking effect of this act * * * shall thereupon and thereafter be proceeded with and disposed of in the District Courts in the same manner and with the same effect as if originally begun therein." Therefore the "Expedition Act" no longer gives the four Circuit Judges power to act in this case.

If section 290 transferring jurisdiction of Circuit Courts to District Courts removed power of Circuit Judges to act under "Expedition Act," then it was because, first, said section 290 expressly so provided; or, second, because the provisions of section 290 are inconsistent with the exercise of the power given by the "Expedition Act" to the Circuit Judges and clearly shows an expressed intention on the part of Congress to **change the well established policy of Congress** to have anti-trust cases **expedited and speedily** decided not by **one**, but by **at least three** judges sitting as circuit judges when the Attorney General certified the case to be one of importance.

Section 290 does not expressly remove the power of the Circuit Judges to hear cases under the "Expedition Act" of 1903.

Does the provisions of section 290 clearly show the exercise of the power given by the Act of 1903 to the Circuit Judges is inconsistent with the transfer of the

jurisdiction of the Circuit Court to the District Court? We contend an examination of section 290 will show that there is nothing in its provisions that indicates an intention to remove the authority of the Circuit Judges to hear anti-trust cases under the "Expedition Act, nor is there anything in the provisions of Section 290 transferring the jurisdiction of the Circuit Court to the District Court that would render inconsistent with or repugnant to the provisions of said section 290, the exercise of the powers given by the "Expedition Act" to the Circuit Judges. The jurisdiction of the Circuit Court is simply transferred to the District Court by section 290. The District Court is simply substituted for the Circuit Court.

If an anti-trust proceeding is now begun by petition under the "Sherman Law" it will be commenced in the District Court. The District Court has now the jurisdiction the Circuit Court formerly had to entertain a petition for relief by the Government under the "Sherman Law."

Is there anything in the mere fact of a transfer of jurisdiction after the institution of the action that clearly expresses an intention by Congress that proceedings for the **expedition of the hearing and determination of the case after it has been begun shall be repealed** or if not repealed the **powers of the Circuit Judges to act under the Expedition Statute suspended?**

Section 290, which is the section that transfers the jurisdiction, is as follows:

> "All suits and proceedings pending in said circuit courts on the date of the taking effect of this Act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and dis-

posed of in the district courts in the same manner and with the same effect as if originally begun therein, the record thereof being entered in the records of the circuit courts so transferred as above provided."

We submit that nothing in the above section 290 can be reasonably construed to express a clear intention on the part of Congress to change the policy of the Government as to expediting cases of general importance begun under the "Sherman Law" and to remove or suspend the powers given the Circuit Judges to speedily hear and determine said cases after they have been commenced. On the contrary, Sec. 290 shows the cases were to be proceeded with the same as before. If cases had been expedited they should continue to be disposed of by the Circuit Judges.

The provision of the "Judicial Code" specifically conferring jurisdiction in anti-trust litigation on the District Court will be found in chapter two, section 24, and paragraphs twenty-three and eight, the provisions of which are as follows:

Section 24:

"Twenty-third.—Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies."

Section 24:

"Eighth. Of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the Commerce Court." These are general provisions.

The anti-trust laws are justified solely by the Interstate Commerce clause of the Federal Constitution.

Now, the "Sherman Law" provides a procedure to prevent the restraint of interstate commerce. The "Expedition Act" of 1903 provides additional procedure **to make more efficient the enforcement of the provisions of the "Sherman Law."**

Was Expedition Act Repealed?

If the "Expedition Act" is repealed, it could only be done in one of two ways, first, by express provision repealing it; second, by implication.

Was it repealed by express provision of the Code? Nowhere in the Code have we been able to find any provision expressly repealing the "Expedition Act" of 1903.

Was it repealed by implication?

The "Expedition Act" was a law providing **for a special proceeding** to accomplish a well defined purpose in order to carry out a certain Public Policy deemed for the best interests of the people, i. e., to transfer certain causes deemed of great public importance **from before one Circuit Judge to four Circuit Judges** and to **provide for an immediate** hearing and determination of said causes.

The "Judicial Code" is a general law.

The rule is that a **general** law will not impliedly repeal those which are special. It is the established rule of construction that the law does not favor a repeal by implication but when there are two or more provisions relating to the same **subject-matter,** they must, if possible, be construed so as to maintain the integrity of both.

It is also a rule that where two statutes treat of the same **subject** one being **special and the other general,** unless they are irreconcilable and inconsistent, the lat-

ter, although latest in date will not be held to have repealed the former but the **special act will prevail in its application to the subject-matter** as far as coming within its particular provisions.

> Sutherland on Statutory Construction, (2d Ed.), Sec. 274, p. 528.

When there are two or more provisions of statutes relating to **the same subject-matter** they must, if possible, be construed so as to maintain the integrity of both.

> Sutherland on Statutory Construction, (2d Ed.), Sec. 274, p. 28.

It is a rule of construction that a general statute without negative words will not repeal by implication from their repugnancy the provisions of a former one which is special, local or particular or which is limited in its application unless there is something in the general law or in the course of **legislation upon its subject-matter** that makes it manifest that the legislature contemplated and intended a repeal.

> Sutherland on Statutory Construction, Sec. 274, pp. 526-527 (2d. Ed.).

The "Expedition Act" clearly established the policy of the government that if an anti-trust proceeding was deemed of general public importance, that the Attorney General might certify to that fact and then the case should pursue a special course of proceeding, to-wit: That it should be at once sent from before **one** Judge to **the four Circuit Judges**. Second, that the case should be heard immediately by at least **three** Circuit

Judges, if there be only three in the Circuit, or before at least two Circuit Judges and one District Judge.

The "Expedition Act" provides after the certificate is filed by the Attorney General that "Thereupon such case shall be given **precedence** over others and in every **way expedited.**"

This policy of expedition was adopted as announced in this statute of 1903, to make **more efficient** the anti-trust act. It was to strengthen the "Sherman Law" as to its enforcement. This policy of Congress has never been departed from. There is nothing in the "Judicial Code" that shows a change of policy. The whole policy of Congress has been and is to make more efficient and speedy the enforcement of the "Sherman Law" and to prevent and avoid delays in the hearing and decision of cases under the act against combinations and monopolies in restraint of trade. The "Judicial Code" was not intended to interfere with this policy. There is no express provision in it showing such an intention. The Courts will not hold this policy of Congress to be changed by reason of the adoption of a General Judicial Code, unless the intention to change the policy and remove the provisions for expediting the hearing and decision of these cases is clearly expressed.

Ex parte Crow Dog, 109 U. S. R. P. 557.
United States v. Nix, 189 U. S. R. P. 199.

Power of Circuit Judge Under Expedition Act Not Removed or Suspended or Act Repealed Unless Congress Has Clearly Expressed Its Intention so to Do.

The four United States Circuit Judges will not be deprived of jurisdiction over causes involving such vast interests as anti-trust proceedings may involve when the words and language of the statute relied on so to do are **general** and **inconclusive; and** especially is this so when to so deprive the four Circuit Judges of the jurisdiction and power given them by the "Expedition Act" **would reverse a well-settled policy of** Congress. Before this Court would be justified in holding that the general provisions of the "Judicial Code" removed the power of the four Circuit Judges to further hear this case it must be shown **to the Court that Congress has clearly expressed its intention** to remove **the power to** further **hear the case** from **the said** four Circuit Judges.

Ex parte Crow Dog, 109 U. S. R., p. 557.
Sutherland on Statutory Construction, Sec. 274, pp. 526-527 (2d Ed.).
United States v. Nix, 189 U. S. R., p. 199.

The question is presented whether the four said Circuit Judges were deprived of authority to proceed further in the case by the enactment of the Judicial Code. There being no direct provision in the Judicial Code on this subject, it was done, if at all, by implication, and the implication must have a retroactive effect.

The change as to the Circuit Courts was merely a substitution of the District Courts for the Circuit Courts.

U. S. v. Haynes, 29 Fed. Rep. 691, 696.

The title of said Act is, "An Act to codify, revise and amend the laws relating to the judiciary." It is not an enactment of a new body of laws, but merely a continuation of them, with necessary amendments, and this fact is plainly set forth in the following sections of said code:

> "Sec. 292. Wherever, in any law not contained within this Act, a reference is made to any law revised or embraced herein, such reference, upon the taking effect hereof, shall be construed to refer to the section of this Act into which has been carried or revised the provision of law to which reference is so made."
>
> "Sec. 294. The provisions of this Act, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof, and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest."

Sections 298, 117 and 118 of said Code provide as follows:

> Sec. 298. "That the repeal of existing laws providing for the appointment of judges and other officers mentioned in this Act, or affecting the organization of the courts, shall not be construed to affect the terms in office of the incumbants (except the office be abolished) but they shall continue to hold their respective offices during the terms for which appointed, unless removed as provided by law."

Section 299 of said Code provides as follows:

> "The repeal of existing laws, or the amendments thereof, embraced in this Act, **shall not affect any** act done, or any right accruing, or accrued, **or any**

suit or proceeding, including **those pending on writ of error, appeal, certificate,** or writ of certiorari, in **any appellate court referred to,** or included within, the provisions of this Act, pending at the time of the taking effect of this Act, but all such suits **and proceedings**, and **suits and proceedings** for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, **as if said repeal or amendment had not been made.**"

Section 299 seems to be conclusive of the authority and duty of the Circuit Judges to continue to preside in this case.

There is no provision in the Code giving any part of it a retro-active effect, and in the absence of such a provision, it cannot have such effect.

There is nothing in said code inconsistent with said duty of the Circuit Judges that can operate as a repeal, by implication of the law under which they were acting.

In view of the saving clauses in said section 299, it is entirely immaterial whether said Act of February 11, 1903, was repealed either in express terms or by implication, by the provisions of the Code, but as there is no direct repealing provision in said Code and nothing in it inconsistent with said Act, it remained in force notwithstanding it was not included therein.

Sutherland on Statutory Constructions, (2d Ed.), Vol. I, Sec. 272, p. 522.

Great Northern Ry. Co. v. United States, 155 Fed. Rep. 945, Eighth Circuit, Vandevanter, J.

Holden v. Minnesota, 137 U. S. 483.

Commonwealth of Ky. v. Gunstead, 108 Ky. 59.

Gibson v. Ackerman, 70 Ill. App. 399.

But assuming for the sake of argument that the Judicial Code repealed said Act of February 11, 1903, and that there was no saving clause in said Code, the four Circuit Judges **had exclusive authority** to sit in this cause long prior to the enactment of said Code, and there is nothing in the latter giving it retroactive force to deprive them of that authority.

"To avoid injustice and unconstitutionality, it is always laid down as a rule of construction that a statute is to be taken or construed as prospective unless its language is inconsistent with that interpretation."

Sutherland on Statutory Construction, (2d Ed.), Vol. I, Sec. 335, on page 641, citing many cases.
McEwen v. Den, 24 How. (65 U. S.) 242.
Hepburn v. Griswold, 8 Wall (75 U. S.) 603.
Chew Heong v. United States, 112 U. S. 536.

Power to Issue Writ of Prohibition.

Section 262 of the Judicial Code in general terms confer on this court jurisdiction to issue writs of prohibition, and where it appears that the court whose action is sought to be prohibited clearly had no jurisdiction of the cause originally, or of some collateral matter arising therein, a party who has objected to the jurisdiction and has no other adequate remedy, is entitled to a writ of prohibition as of right.

Ex parte Oklahoma, 220 U. S. 191, 208.
In re Mass., 197 U. S. 482, 488.
In re Alix, 166 U. S. 136, 137.
In re Rice, 155 U. S. 396, 402, 403.
In re Cooper, 143 U. S. 472, 495.

Smith v. Whitney, 116 U. S. 167, 163, 173.
In re Morrison, 147 U. S. 14, 36.

Section 238 of the Judicial Code provides as follows:

> "Appeals and writs of error may be taken from the District Courts, including the United States District Court for Hawaii, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the Court below for decision; from the final sentences and decrees in prize causes; in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question; and in any case in which the constitution or law of a state is claimed to be in contravention of the Constitution of the United States."

The foregoing section confines an appeal or writ of error based on a question of jurisdiction to a case where the jurisdiction of the court is in question. There is no question of the jurisdiction of the court in this case, only the question of the authority of the judge to sit in the case, and the section does not cover that question, therefore the complainant is without adequate remedy except by writ of prohibition.

We therefore submit the demurrer herein should be overruled.

Attorney General.

Edward C. Brown.
of Counsel for Complainant.

EX PARTE UNITED STATES, PETITIONER.

PETITION FOR WRIT OF PROHIBITION.

No. 10, Original. Submitted December 16, 1912.—Decided January 6, 1913.

Unless the repeal be express or the implication to that end be irresistible, a general law does not repeal a special statutory provision affording a remedy for specific cases. *Petri* v. *Creelman Lumber Co.*, 199 U. S. 487.

The special provisions of the Expedition Act of February 11, 1903, 32 Stat. 823, c. 544, requiring in a particular class of cases the organization of a court constituted in a particular manner, were not repealed by the Judicial Code of 1911.

The new District Court created by the Judicial Code of 1911 is the successor of the formerly existing Circuit Court and as such is vested with the duty of hearing and disposing of cases under the Expedition Act of 1903, § 291.

Section 291 of the Judicial Code of 1911 expressly confers powers of the Circuit Court upon the now existing District Courts.

Under the Expedition Act of 1903 a court composed as required by that act may be organized at the request of the United States to consider the plan to carry out the decree of this court holding a combination unlawful under the Sherman Anti-trust Act.

In this case the district judge having refused to organize a court under the Expedition Act to determine the form of decree to be entered under the mandate of this court, this court issues its writ of prohibition directed to the district judge against entering a decree.

THE facts, which involve the construction of the Expedition Act of 1903 and the question of whether certain provisions of the Judicial Code of 1911 conflict therewith, are stated in the opinion.

The Attorney General and *Mr. Edward C. Crow*, Special Assistant to the Attorney General, for petitioner.

Mr. Henry S. Priest for the respondent.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The matter before us concerns the execution of the decree in *United States* v. *Terminal Railroad Association of St. Louis*, 224 U. S. 383. That case, which involved violations of the Sherman Anti-trust Act, was commenced in the Circuit Court of the United States for the Eastern District of Missouri, was there decided by four circuit judges in consequence of the filing by the Attorney General of the United States of the certificate provided for by the act of February 11, 1903 commonly known as the Expedition Act, c. 544, 32 Stat. 823. While the case was here pending, the Judicial Code of March 3, 1911, 36 Stat. 1087, c. 231, was adopted, and hence our mandate was directed to the District Court of the United States for the Eastern District of Missouri, the successor of the Circuit Court.

Upon the filing of the mandate in that court, the judge of the District Court being disqualified, District Judge Trieber, of the District Court of Arkansas, was assigned to sit in the cause. Disagreement between the parties having arisen as to what plan of reorganization should be adopted to carry out the mandate of this court, and the court below having expressed its intention to adopt by a final decree a plan to which the Government did not assent, objection was made by the United States to proceeding further, upon the ground thus stated by the court below in its opinion

" . . . as a certificate under the Expedition Act was filed when the action was originally instituted, the decree on the mandate could not be entered by a single judge, but only by at least three circuit judges, in conformity with the Expedition Act above referred to."

The suggestion having been overruled by a formal order and fruitless effort having been made to induce action

by the senior circuit judge who was also the senior circuit judge who had participated in the original decision of the cause, the interposition of this court by the proceeding before us was invoked. The judge below evidently only desirous of being informed as to his duty, after leave to file the application for prohibition was here granted, has submitted the issue on the opinion of the court below and upon printed argument for both parties, as if on a return to a rule to show cause why the writ should not issue.

In refusing to apply the Expedition Act the court below, "assuming without deciding that the Judicial Code does not repeal the Expedition Act," based its refusal upon the ground that the proceeding to enforce the mandate of this court was not within the intendment of the Expedition Act because not a matter requiring the hearing contemplated by that act. This view was maintained by conclusions as to the general nature of the duty to give effect to a decree already rendered and by considerations based upon the opinion that the decree of this court was so specific as to leave no room for discussion and therefore to afford no occasion for organizing a tribunal constituted in accordance with the requirements of the Expedition Act. In the printed argument, however, upon which the matter has been here submitted, the action of the court is sought to be sustained upon a much broader ground, viz., that as by the Judicial Code the Circuit Courts were abolished, it has become no longer possible to organize a court in accordance with the Expedition Act, because that act by implication has been repealed by the Judicial Code. Thus, after commenting upon the provisions of the Judicial Code, it is said:

"The Judicial Code (Sec. 1, Chap. I) provides for a District Judge for each District Court.

"There is no provision for the exercise of any judicial authority by any circuit judge, except by special appointment, pursuant to the provision of Sec. 18, Chap. I, of

the Code. He then derives his power from such appointment and from no other source. As Circuit Judges they have no authority in the enforcement of the jurisdiction of the District Courts.

"After devolving upon the District Courts the jurisdiction formerly possessed by the abolished Circuit Courts, the Code (Chap. VI) creates a Circuit Court of Appeals, and provides (Sec. 117):

"'There shall be in each circuit a Circuit Court of Appeals which shall consist of three judges, . . . which shall be a court of record with appellate jurisdiction as hereinafter limited and established.'

"It must be conceded, in view of this legislation, if this suit was now instituted, it could only be heard by a District Judge unless some Circuit Judge should be appointed under the provisions of Sec. 18, Chap. I, to discharge the functions of a District Judge and the case be brought before him in that capacity."

But the contention is faulty, because although the premise upon which it rests be conceded, the deduction drawn from it is unwarranted. It is of course undoubted that Chap. XIII of the Judicial Code, while not interfering with the tenure of office of the circuit judges, abolished the Circuit Courts. It is also undoubted that by that act the District Courts provided for were made the successors of both the Circuit and District Courts which had theretofore existed and were in a general sense endowed with the jurisdiction and power theretofore vested in such prior courts. It is moreover beyond question that the statute, while contemplating as a general rule the holding of District Courts by district judges and as a general rule for holding Circuit Courts of Appeal by circuit judges, nevertheless expressly directs when the occasion requires (§ 18) the assignment by the senior judge, or the circuit justice, or the Chief Justice, of a circuit judge to hold a District Court and endows a judge so assigned with all

the authority of a district judge (§ 19), giving power in case of such designation to hold separately at the same time a District Court in such district, and to discharge all the judicial duties of the district judge therein (§ 14). The statute therefore clearly gives to the circuit judges the rights and powers of judges of the new District Courts, and calls such powers into play when assigned according to law.

The question, therefore, reduces itself to this: Were the special provisions of the Expedition Act requiring in a particular class of cases the organization of a court constituted in a particular manner repealed by the Judicial Code? This is the only question, because if that act was not repealed by the Code, then its provisions amount to an assignment by operation of law of the circuit judges to sit as judges of the District Court for the purpose of discharging the duties imposed by the act. When the issue is thus narrowed solution is readily reached by the application of the elementary rule that a special and particular statutory provision affording a remedy for particular and specific cases is not repealed by a general law unless the repeal be express or the implication to that end be irresistible. *Petri* v. *Creelman Lumber Co.*, 199 U. S. 487, 497. That the new District Court created by the Judicial Code was vested with the duty of hearing and disposing of the cases provided for in the Expedition Act as the successor of the formerly existing Circuit Court, as we have already stated, is undoubted. The mere fact that the Expedition Act in terms refers to the organization of a Circuit Court would be, as a general rule, under the circumstances, of no importance, and becomes absolutely without significance in view of the express provision of Chap. XIII, § 291, of the Judicial Code, saying: "Wherever, in any law not embraced within this Act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall,

upon the taking effect of this Act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts."

The Expedition Act being therefore still in force and its provisions being applicable to the District Courts which the Judicial Code created, we think the court below erred in concluding that the United States was not entitled to a District Court organized in the mode pointed out in the Expedition Act unless it be, as stated by the lower court in its opinion, the subject in hand was of such a character as not to be within the scope of the Expedition Act. Coming to consider that question without going into any elaboration, we are of opinion that error was committed in so holding. While it is true that the mandate of this court gave certain specific directions as to the scope and character of the decree to be entered, it afforded an opportunity to the defendants to submit a plan in order to carry out the decree and gave to the United States an opportunity to be heard in opposition to that plan, and left to the court a serious and important duty to be discharged in any event and especially in case of controversy on the subject. These considerations, we think, brought the subject within the scope of the Expedition Act and justified the request of the United States that the case be considered and a decree entered by a court composed as provided in that act.

Writ of prohibition to issue.